WEST VIRGINIA CODE CHAPTER 62

§62-1-1. Complaint.

The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a justice of the peace.

§62-1-2. Warrant -- Issuance.

If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to arrest persons charged with offenses against the state. More than one warrant may issue on the same complaint.

§62-1-3. Same -- Contents.

The warrant shall be signed by the justice and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged in the complaint. It shall command that the defendant be arrested and brought before a justice of the county in which the warrant is executed.

§62-1-4. Same -- Execution; arrest by officer without warrant in possession; duplicate warrants.

The warrant shall be executed by the arrest of the defendant. It may be executed at any time or place within the state. The officer need not have the warrant in his possession at the time of the arrest, but upon request by the defendant, the officer shall show the warrant to him as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. While the complaint is pending, a warrant returned unexecuted and not cancelled or a duplicate warrant may be delivered to the same or another authorized officer for execution.

§62-1-5. Same -- Delivery of prisoner before magistrate; complaint for person arrested without warrant; return.

(a) (1) An officer making an arrest under a warrant issued upon a complaint, or any person making an arrest without a warrant for an offense committed in his presence or as otherwise authorized by law, shall take the arrested person without unnecessary delay before a magistrate of the county where the arrest is made.

(2) If a person arrested without a warrant is brought before a magistrate, a complaint shall be filed forthwith in accordance with the requirements of rules of the Supreme Court of Appeals.

(3) An officer executing a warrant shall make return thereof to the magistrate before whom the defendant is brought.

(b)(1) Notwithstanding any other provision of this code to the contrary, if a person arrested without a warrant is brought before a magistrate prior to the filing of a complaint, a complaint shall be filed forthwith in accordance with the requirements of rules of the Supreme Court of Appeals, and the issuance of a warrant or a summons to appear is not required.

(2) When a person appears initially before a magistrate either in response to a summons or pursuant to an arrest with or without a warrant, the magistrate shall proceed in accordance with the requirements of the applicable provisions of the rules of the Supreme Court of Appeals.

§62-1-5a. Citation in lieu of arrest; failure to appear.

A law-enforcement officer may issue a citation instead of making an arrest for the following offenses, if there are reasonable grounds to believe that the person being cited will appear to answer the charge:

(1) Any misdemeanor, not involving injury to the person, committed in a law-enforcement officer's presence: Provided, That the officer may arrest the person if he has reasonable grounds to believe that the person is likely to cause serious harm to himself or others; and

(2) When any person is being detained for the purpose of investigating whether such person has committed or attempted to commit shoplifting, pursuant to section four, article three-a, chapter sixty-one of this code.

The citation shall provide that the defendant shall appear within a designated time.

If the defendant fails to appear in response to the citation or if there are reasonable grounds to believe that he will not appear, a complaint may be made and a warrant shall issue. When a physical arrest is made and a citation is issued in relation to the same offense the officer shall mark on the citation, in the place specified for court appearance date, the word "arrested" in lieu of the date of court appearance.

§62-1-6. Informing defendant of nature of complaint and his rights; opportunity to confer with counsel and arrange bail.

The justice shall in plain terms inform the defendant of the nature of the complaint against him of his right to counsel and, if the offense is to be presented for indictment, of his right to have a preliminary examination. He shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him He shall provide the defendant reasonable means to communicate with an attorney or with at least one relative or other person for the purpose of obtaining counsel or arranging bail. The defendant shall not be committed to jail or removed from the county of arrest until he has had a reasonable opportunity to confer with counsel or to arrange bail. He may be detained under such security measures as the circumstances warrant. If the defendant is unable to provide bail or if the offense is unbailable, he shall be committed to jail.

§62-1-6a. Booking photographs of criminal defendants.

(a) Except as authorized by the provisions of this section, a law enforcement agency may not share on social media the booking photograph of an individual arrested for the alleged commission of a minor offense.

(b) As used in this section, unless context clearly indicates, otherwise:

"Booking photograph" means a photograph or still, non-video image of an individual taken, generated, or otherwise created by a law enforcement agency pursuant to an arrest or while an individual is in the agency's lawful custody.

"Law enforcement agency" means any duly authorized state, county, or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality of the state: *Provided*, That the Division of Corrections and Rehabilitation and its subordinate organizations may not be considered a law enforcement agency for purposes of this section.

"Social media" means a publicly available Internet-based platform that allows a user to produce, post, or curate content and interact with other users via text, images, video, and audio, for the purpose of informing, sharing, promoting, collaborating, or networking.

"Minor offense" means an offense that:

Is a misdemeanor or nonviolent felony eligible for expungement as provided by §61-11-26(a) of this code, and not excepted from eligibility for expungement under §61-11-26(c) of this code: *Provided*, That, for purposes of this section, offenses under §17B-4-3 of this code and misdemeanor offenses under §17C-5-2 of this code, shall be considered minor offenses for purposes of this section.

(c) Exceptions. — A law enforcement agency may share on social media the booking photograph of an individual arrested for the alleged commission a minor offense, if:

(1) The individual is convicted of a criminal offense based upon the conduct for which the individual was in custody for at the time the booking photograph was taken;

(2) A law-enforcement agency has determined that the suspect is a fugitive or an imminent threat to an individual or to public safety and reasonably believes that releasing or disseminating the suspect's booking photograph will assist in locating or apprehending the suspect or reducing or eliminating that threat; or

(3) A court of competent jurisdiction orders the release or dissemination of the booking photograph based upon a finding that doing so is in furtherance of a legitimate interest.

(d) A law-enforcement agency may not be subject to civil action or be held liable when the publication, release, or dissemination of a booking photograph was made by mistake of fact

or error, and that publication, release, or dissemination was done in good faith.

(e) A law-enforcement agency that shares on social media a booking photograph of an individual arrested for the suspected commission of any crime shall remove the booking photograph from its social media page within 14 days upon the request of the individual who is the subject of the social media post, or that individual's authorized representative, if any of the following have occurred:

(1) The criminal charge for which the booking photograph was taken has been dismissed;

(2) A grand jury has declined to return an indictment on the charge for which the booking photograph was taken; or

(3) A circuit court or jury has entered a judgment of acquittal on the charge for which the booking photograph was taken, or a court of competent jurisdiction has issued an order or opinion reversing, vacating, or otherwise nullifying the conviction for which the booking photograph was taken.

§62-1-7. Offense arising in other county.

In all cases where a person is arrested in a county other than where the indictment or charge is pending, an arraignment shall be held pursuant to the Rules of Criminal Procedure for Magistrate Courts in West Virginia. If the person remains incarcerated after the arraignment, he or she shall be transported to the regional jail serving the charging county within five days of arrest.

§62-1-8. Preliminary examination.

If the offense is to be presented for indictment, the preliminary examination shall be conducted by a justice of the county in which the offense was committed within a reasonable time after the defendant is arrested, unless the defendant waives examination. The defendant shall not be called upon to plead. Witnesses shall be examined and evidence introduced for the state under the rules of evidence prevailing in criminal trials generally. The defendant or his attorney may cross-examine witnesses against him and may introduce evidence in his own behalf. On motion of either the state or the defendant, witnesses shall be separated and not permitted in the hearing room except when called to testify. If the defendant waives preliminary examination or if, after hearing, it appears from the evidence that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the justice shall forthwith hold him to answer in the court having jurisdiction to try criminal cases. If the evidence does not establish probable cause, the defendant shall be discharged. After concluding the proceeding the justice shall transmit forthwith to the clerk of the court to which the defendant is held to answer all papers in the proceeding and any bail taken by him

§62-1-9. Continuance.

The justice shall grant upon request of the defendant one continuance for a period not to exceed ten days. A continuance for a like period shall be granted on request of the state if the defendant has been admitted to bail. No other continuance shall be granted except for good cause or by mutual consent of the state and the defendant.

§62-1-10. Concurrent powers.

A judge of a court having jurisdiction to try criminal offenses shall have the same power to issue warrants as conferred upon a justice of the peace by this article. A mayor or judge of a police court acting in the capacity of a justice of the peace shall have all the powers and duties conferred upon a justice by this article.

§62-1-11. Repeal of inconsistent laws.

All provisions of this code which are inconsistent with the provisions of this article are hereby repealed to the extent and only to the extent of such inconsistency: Provided, That under no circumstances shall the foregoing repealer provision or the provisions of this article be construed as repealing, limiting or in any way altering the provisions of article nineteen, chapter seventeen-c of this code.

§62-1-12. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or its application, and to this end, the provisions of this article are declared to be severable.

§62-1A-1. Search warrant -- Who may issue.

A search warrant authorized by this article may be issued by a judge of a court having jurisdiction to try criminal cases in the county, or by a justice of the county, or by the mayor or judge of the police court of the municipality, wherein the property sought is located.

§62-1A-2. Same — Grounds for issuance; property defined.

(1) A warrant may be issued under this article to search for and seize any property

(a) Stolen, embezzled, or obtained by false pretenses;

(b) Designed or intended for use or which is or has been used as a means of committing a criminal offense; or

(c) Manufactured, sold, kept, concealed, possessed, controlled, or designed or intended for use or which is or has been used, in violation of the criminal laws of this state.

(2) As used in this section, the term "property" includes documents, books, papers, electronic and digital information, including, but not limited to, social media accounts, and any other tangible objects.

(a) For purposes of this section, "electronic and digital information" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system, but does not include (1) Any wire or oral communication; (2) any communication made through a tone-only paging device; or (3) the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

(b) A search warrant issued for the search and seizure of a computer, computer network, or other device containing electronic or digital information shall state with particularity the item, application, program, or information sought.

(c) A search warrant issued pursuant to this section or Rule 41 of the Rules of Criminal Procedure may be executed or served to the extent it is constitutionally permissible anywhere the electronic or digital information is stored, capable of being produced or where the person or entity in possession of the electronic or digital information does business or resides.

§62-1A-3. Same -- Issuance and contents.

A warrant shall issue only upon complaint on oath or affirmation supported by affidavit sworn to or affirmed before the judge or magistrate setting forth the facts establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that there is probable cause to believe that grounds therefor exist, he shall issue a warrant identifying the property and particularly describing the place, or naming or particularly describing the person, to be searched. The warrant shall be directed to the sheriff or any deputy sheriff or constable of the county, to any member of the department of public safety or to any police officer of the municipality wherein the property sought is located, or to any other officer authorized by law to execute search warrants. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search forthwith the person or place named for the property specified, to seize such property and bring the same before the judge or magistrate issuing the warrant. Such warrant may be executed either in the day or night.

§62-1A-4. Same -- Execution and return with inventory.

The warrant may be executed and returned only within ten days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property is taken a copy of the warrant and a receipt for the property taken; or if the person from whose premises the property is taken is not present at the time, the officer shall leave the copy and receipt at the place from which the property is taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The judge or magistrate shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken.

§62-1A-5. Breaking and entering premises.

The officer may break into a house, building or structure, or any part thereof, or anything therein, or any vehicle, vessel or other conveyance, to execute a search warrant, or commit such breaking as may be necessary to liberate himself or a person aiding him in the execution of the warrant. If the place to be searched is a dwelling he shall not attempt a forcible entry until he shall have given notice of his authority and purpose and shall have been refused admittance.

§62-1A-6. Motion for return of property and to suppress evidence.

A person aggrieved by an unlawful search and seizure may move for the return of the property and to suppress for use as evidence anything so seized on the ground that (1) the property was illegally seized without a warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. If the offense giving rise to the issuance of the warrant be one which a magistrate has jurisdiction to hear and determine, the motion may be made to him If the offense is cognizable only before a court of record the motion shall be made to the court having jurisdiction. The judge or magistrate shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be returned unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion may be made before trial or hearing upon three days' notice, or, the motion may be made or renewed at the trial or hearing.

§62-1A-7. Disposition of seized property.

Property taken pursuant to the warrant shall be preserved as directed by the court or magistrate for use as evidence and thereafter shall be returned, destroyed or otherwise disposed of as the court or magistrate may direct.

§62-1A-8. Purpose of article; construction of other provisions dealing with search warrants; repeal of inconsistent laws.

It is intended that this article govern the issuance and execution of all search warrants, and no subsequent legislation shall be held to supersede or modify the provisions of this article except to the extent that such legislation shall do so specifically and expressly. It is recognized that throughout this code there are many provisions dealing with the issuance and execution of search warrants, and it is not possible at this time to amend and reenact or to specifically repeal those provisions. Accordingly, all such provisions shall be construed so as to conform to and be consistent with the pertinent provisions of this article. In the event that there are provisions in this code so inconsistent with the provisions of this article as to preclude such construction, such other provisions are hereby repealed to the extent of such inconsistency.

§62-1A-9. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or its application, and to this end, the provisions of this article are declared to be severable.

§62-1A-10. Motor vehicle searches.

(a) A law-enforcement officer who stops a motor vehicle for an alleged violation of a traffic misdemeanor law or ordinance may not search the vehicle unless he or she:

(1) Has probable cause or another lawful basis for the search;

(2) Obtains the written consent of the operator of the vehicle on a form that complies with section eleven of this article; or, alternatively,

(3) Obtains the oral consent of the operator of the vehicle and ensures that the oral consent is evidenced by an audio recording that complies with section eleven of this article.

(b) Notwithstanding the provisions of subsection (a) of this section, should a form meeting the requirement of section eleven of this article or an audio recording device be unavailable a handwritten consent executed by the vehicle operator and meeting the consent requirements of section eleven of this article will suffice.

(c) Notwithstanding the provisions of subsection (a) or (b)of this section should a court find that the officer had a reasonable suspicion of dangerousness to his or her safety which precluded recordation of the consent the recordation requirements of this section shall be found inapplicable.

(d) Failure to comply with the provisions of this section shall not, standing alone, constitute proof that any consent to search was involuntary.

(e) A finding by a court that the operator of a motor vehicle voluntarily and verbally consented to a search of the motor vehicle shall make the recordation requirements of this section inapplicable.

(f) Nothing contained in this section shall be construed to create a private cause of action.

(g) This section takes effect on January 1, 2011.

§62-1A-11. Rules for certain evidence of consent to vehicle search.

(a) To facilitate the implementation of section ten of this article the Governor's Committee on Crime, Delinquency and Corrections shall promulgate emergency and legislative rules in accordance with article three, chapter twenty-nine-a of this code to establish the requirements for:

(1) A form used to obtain the written consent of the operator of a motor vehicle under section ten of this article; and

(2) An audio recording used as evidence of the oral consent of the operator of a motor vehicle under section ten of this article.

(b) The form required under subsection (a) of this section shall contain:

(1) A statement that the operator of the motor vehicle fully understands that he or she may refuse to give the law-enforcement officer consent to search the motor vehicle;

(2) A statement that the operator of the motor vehicle is freely and voluntarily giving the law-enforcement officer consent to search the motor vehicle;

(3) A statement that the operator of the motor vehicle may withdraw the consent at any time during the search;

(4) The time and date of the stop giving rise to the search;

(5) The make and the registration number of the vehicle to be searched; and

(6) The name of the law-enforcement officer seeking consent.

(c) The rules adopted under subdivision (2), subsection (a) of this section must require the audio recording to reflect an affirmative statement made by the operator that:

(1) The operator of the motor vehicle understands that the operator may refuse to give the law-enforcement officer consent to search the motor vehicle;

(2) The operator of the motor vehicle is voluntarily giving the law-enforcement officer consent to search the motor vehicle; and

(3) The operator of the motor vehicle was informed that he or she may withdraw the consent at any time during the search.

(d) The Governor's Committee on Crime, Delinquency and Corrections shall promulgate the emergency and legislative rules required by this section no later than December 31, 2010.

§62-1B-1. Bill of particulars.

The court for cause may direct the prosecuting attorney to file a bill of particulars. A bill of particulars may be amended at any time subject to such conditions as justice requires.

§62-1B-2. Defendant's statements; reports of examinations and tests; defendant's books, papers and tangible objects.

Upon motion of a defendant the court may order the prosecuting attorney to permit the defendant to examine and copy or photograph any relevant (1) written or recorded statements or confessions made by the defendant, or copies thereof, which are known by the prosecuting attorney to be within the possession, custody or control of the state, (2) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, which are known by the prosecuting attorney to be within the possession, custody or control of the state, and (3) books, papers, or tangible objects belonging to or seized from the defendant which are known by the prosecuting attorney to be within the possession, custody or control of the state.

§62-1B-3. Time of motion.

A motion under this article may be made at any time not later than ten days before trial, or at such reasonable later time as the court may permit.

§62-1B-4. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or its application, and to this end, the provisions of this article are declared to be severable.

§62-1C-1. Right to bail; exceptions; review.

(a) A person arrested for an offense not punishable by life imprisonment shall be admitted to bail by the court or magistrate. A person arrested for an offense punishable by life imprisonment may, in the discretion of the court that will have jurisdiction to try the offense, be admitted to bail.

(b) Bail may be allowed pending appeal from a conviction, except that bail shall not be granted where the offense is punishable by life imprisonment or where the court has determined from the evidence at the trial or upon a plea of guilty or nolo contendere that the offense was committed or attempted to be committed with the use, presentment or brandishing of a firearm or other deadly weapon, or by the use of violence to a person: Provided, That the denial of bail under one of these exceptions may be reviewed by summary petition to the Supreme Court of Appeals or any justice thereof, and the petition for bail may be granted where there is a likelihood that the defendant will prevail upon the appeal. The court or judge allowing bail pending appeal may at any time revoke the order admitting the defendant to bail.

(c) The amount of bail or the discretionary denial of bail at any stage of the proceedings may be reviewed by summary petition first to the lower appellate court, if any, and thereafter by summary petition to the Supreme Court of Appeals or any judge thereof.

§62-1C-1a. Pretrial release; types of release; conditions for release; considerations as to conditions of release.

(a) Subject to the provisions of §62-1C-1 of this code, when a person charged with a violation or violations of the criminal laws of this state first appears before a judicial officer:

(1) Except for good cause shown, a judicial officer shall release a person charged with a misdemeanor offense on his or her own recognizance unless that person is charged with:

(A) A misdemeanor offense of actual violence or threat of violence against a person;

(B) A misdemeanor offense where the victim was a minor, as defined in §61-8C-1 of this code;

(C) A misdemeanor offense involving the use of a deadly weapon, as defined in §61-7-2 of this code;

(D) A misdemeanor offense of the Uniform Controlled Substances Act as set forth in chapter 60A of this code;

(E) Misdemeanor offenses of sexual abuse;

(F) A serious misdemeanor traffic offense set forth in §17C-5-1 or §17C-5-2 of this code; or

(G) A misdemeanor offense involving auto tampering, petit larceny or possession, transfer or receiving of stolen property when alleged value on the property involved exceeds $250.

(2) For the misdemeanor offenses specified in subsection (a) of this section and all other offenses which carry a penalty of incarceration, the arrested person is entitled to be admitted to bail subject to the least restrictive condition or combination of conditions that the judicial officer determines reasonably necessary to assure that person will appear as required, and which will not jeopardize the safety of the arrested person, victims, witnesses, or other persons in the community or the safety and maintenance of evidence. Further conditions may include that the person charged shall:

(A) Not violate any criminal law of this state, another state, or the United States;

(B) Remain in the custody of a person designated by the judicial officer, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is reasonably able to assure the judicial officer that the person will appear as required and will not pose a danger to himself or herself or to the safety of any other person or the community; (C) Participate in home incarceration pursuant to §62-11B-1 *et seq*. of this code;

(D) Participate in an electronic monitoring program if one is available where the person is charged or will reside.

(E) Maintain employment, or, if unemployed, actively seek employment;

(F) Avoid all contact with an alleged victim of the alleged offense and with potential witnesses and other persons as directed by the court;

(G) Refrain from the use or excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in §60A-1-1 *et seq*. of this code without a prescription from a licensed medical practitioner;

(H) Execute an agreement to forfeit, upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required. The person charged shall provide the court with proof of ownership, the value of the property, and information regarding existing encumbrances of the property as, in the discretion of the judicial officer, is reasonable and necessary collateral to ensure the subsequent appearance of the person as required;

(I) Post a cash bond, or execute a bail bond with solvent sureties who will execute an agreement to forfeit an amount reasonably necessary to assure appearance of the person as required. If other than an approved surety, the surety shall provide the court with information regarding the value of its assets and liabilities and the nature and extent of encumbrances against the surety's property. The surety shall have a net worth of sufficiently unencumbered value to pay the amount of the bail bond; or

(J) Satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of the arrested person, victims, witnesses, other persons in the community, or the safety and maintenance of evidence.

(3) Proper considerations in determining whether to release the arrested person on an unsecured bond, fixing a reasonable amount of bail, or imposing other reasonable conditions of release are:

(A) The ability of the arrested person to give bail;

(B) The nature, number, and gravity of the offenses;

(C) The potential penalty the arrested person faces;

(D) Whether the alleged acts were violent in nature;

(E) The arrested person's prior record of criminal convictions and delinquency adjudications, if any;

(F) The character, health, residence, and reputation of the arrested person;

(G) The character and strength of the evidence which has been presented to the judicial officer:

(H) Whether the arrested person is currently on probation, extended supervision, or parole;

(I) Whether the arrested person is already on bail or subject to other release conditions in other pending cases;

(J) Whether the arrested person has been bound over for trial after a preliminary examination;

(K) Whether the arrested person has in the past forfeited bail or violated a condition of release or was ever a fugitive from justice; and

(L) The policy against unnecessary incarceration of arrested persons pending trial set forth in this section.

(b) In all misdemeanors, cash bail may not exceed three times the maximum fine provided for the offense. If the person is charged with more than one misdemeanor, cash bail may not exceed three times the highest maximum fine of the charged offenses.

(c) Notwithstanding any provisions of this article to the contrary, whenever a person not subject to the provisions of §62-1C-1 of this code remains incarcerated after his or her initial appearance, relating to a misdemeanor, due to the inability to meet the requirements of a secured bond, a magistrate or judge shall hold a hearing within 5 days of setting the initial bail to determine if there is a condition or combination of conditions which can meet the considerations set forth in §62-1C-1a(a)(2) of this code.

(d) A judicial officer may upon notice and hearing modify the conditions of release at any time by imposing additional or different conditions.

(e) A prosecuting attorney and defense counsel, unless expressly waived by the defendant, shall appear at all hearings in which bail or bond conditions are at issue other than the proceeding at which the conditions of release are initially set.

(f) No judicial officer may recommend the services of a surety who is his or her relative as that term is defined in §6B-1-3 of this code.

§62-1C-2. Bail defined; form; receipts.

Bail is security for the appearance of a defendant to answer to a specific criminal charge before any court or magistrate at a specific time or at any time to which the case may be continued. It may take any of the following forms:

(a) The deposit by the defendant or by some other person for him of cash.

(b) The written undertaking by one or more persons to forfeit a sum of money equal to the amount of the bail if the defendant is in default for appearance, which shall be known as a recognizance.

(c) Such other form as the judge of the court that will have jurisdiction to try the offense may determine.

All bail shall be received by the clerk of the court, or by the magistrate and, except in case of recognizance, receipts shall be given therefor by him

§62-1C-3. Fixing of amount; bail may cover two or more charges.

The amount of bail shall be fixed by the court or justice with consideration given to the seriousness of the offense charged, the previous criminal record of the defendant, his financial ability, and the probability of his appearance. When two or more charges are filed or are pending against the same person at or about the same time, the bail given may be made to include all offenses charged against the defendant.

§62-1C-4. Recognizance; signing; requirements for signers or surety company; release upon own recognizance; indigent persons.

The recognizance shall be signed by the defendant. It shall also be signed by one or more adult persons owning real property in the state. The court or justice may require that justification of surety be furnished. The assessed value of the real property as shown on the county land books over and above all liens and encumbrances shall not be less than one half the amount of the bail. Or, the recognizance may be signed by the defendant and a surety company authorized to do business in this state. If the offense is a felony, the judge of the court that will have jurisdiction to try the offense may release the defendant on his own recognizance. If the offense is a misdemeanor, either the court or justice may release the defendant on his own recognizance. An indigent person who the court is satisfied will appear as required shall not be denied bail because of his inability to furnish recognizance.

§62-1C-5. Recognizance and deposits subject to order of court or magistrate.

The recognizance shall be returnable to and all deposits shall be held by the court before whom the defendant is to appear or does appear, and upon the transfer of the case to any other court the recognizance shall be returnable to and transmitted together with any deposits to such other court.

§62-1C-6. Continuing bail.

The bail as initially given may continue in effect pending indictment, arraignment, continuance, trial and appeal after conviction, as the court may direct.

§62-1C-7. Forfeiture of bail; basis therefor.

(1) Whenever a person under bail serves as his or her own surety and he or she willfully and without just cause fails to appear as and when required or violates any other term or condition of bail, the circuit court or magistrate shall declare the bail forfeited.

(2) Whenever a person or entity other than the person under bail serves as surety, forfeiture of bail shall be declared only when the person under bail willfully and without just cause fails to appear as and when required.

§62-1C-8. Same -- Setting aside.

The court or justice may direct that a forfeiture be set aside, upon such conditions as may be imposed, if it appears that justice does not require the enforcement of the forfeiture.

§62-1C-9. Same -- Enforcement.

When a forfeiture has not been set aside, the court or justice, upon motion of the state, shall enter a judgment of default and execution may issue thereon: Provided, That if the forfeiture is declared in a court of record, the order taking judgment shall be entered at the same term of court in which the forfeiture was declared: And provided further, That if the deposit for bail be by a person other than the defendant, or if the bail be in the form of recognizance, such person making the deposit or the surety on the recognizance shall be given ten days' notice by certified mail at his last-known address to appear and show cause why a judgment of default should not be entered. Execution shall issue in the name of the state and shall proceed in the manner provided by law in civil actions. If the bail be in the form of bonds or stocks, the judgment order may direct that all or part thereof be sold through a state or national bank or through a brokers exchange registered with the federal securities and exchange commission.

§62-1C-10. Same -- Bail in excess of jurisdictional limit of justice or of particular court.

Where the forfeiture has been declared by a justice or by a court of limited jurisdiction of bail in excess of the jurisdictional limit of justice or of the particular court, such forfeiture shall be certified to a court of the county having sufficient jurisdiction, which court shall thereupon proceed as if the forfeiture were originally declared in such court.

§62-1C-11. Same -- Remission.

After entry of such judgment, the court or justice may remit the penalty in whole or in part under the conditions applying to the setting aside of forfeiture in section eight of this article.

§62-1C-12. Same -- Exoneration; return of deposit.

(a) When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court or magistrate shall exonerate the surety and release any bail and, if the bail be in a form other than a recognizance, the deposit shall be returned to the person who made the same. The surety may be exonerated by a deposit of cash in the amount of the bail or by a timely surrender of the defendant into custody.

(b) Notwithstanding any provision of this code to the contrary, when a bail bondsman, as defined in article ten, chapter fifty-one of this code, has a surety bond forfeited because of the failure of a defendant to appear before a court or magistrate, that bail bondsman shall be reimbursed the full amount of the bond forfeiture, be it cash or surety, if the bail bondsman returns the defendant to the custody of the court or magistrate, within two years of the forfeiture of the bond.

(c) The Administrator of the West Virginia Supreme Court of Appeals shall, ex officio, be empowered to audit, review and suspend any bail bondsman whose surety on bonds is or becomes insufficient or whose assets are below the amount of bonds he or she has in existence.

§62-1C-13. Same -- Defects in form of bail.

No action or judgment for forfeiture of bail shall be defeated or arrested by the neglect or omission to record the declaration of forfeiture or by reason of any defect in the form of the bail, if it appear to have been taken by a court or justice authorized to take it, and be substantially sufficient.

§62-1C-14. Bailpiece; issuance to surety; taking accused into custody.

(a) A bailpiece is a certificate stating that the bail became such for the accused in a particular case and the amount thereof. Upon demand therefor, the court, magistrate, or clerk shall issue to the bail bondsperson a bailpiece. Any officer having authority to execute a warrant of arrest shall assist the bail bondsperson holding such bailpiece to take the accused into custody and produce him or her before the court or magistrate. The bail bondsperson may take the accused into custody and surrender him or her to the court or magistrate without such bailpiece.

(b) If bailpiece is inaccessible due to unavailability of the court's circuit clerk or magistrate, the bail bondsperson, or his or her designee, can take an offender to a regional jail without bailpiece, and the jail must accept the offender, provided:

(1) The bail bondsperson, or his or her designee, delivering an offender to a jail without a bailpiece issued by the court's circuit clerk or magistrate appears on the registered list maintained at the jails and approved by the court of original jurisdiction;

(2) The bail bondsperson signs an agreement provided by the jail indicating that the offender has been booked in lieu of bailpiece. Such agreement shall contain a clause indicating the incarceration of such offender is lawful and that the jail accepting the offender shall be held harmless from any claims of illegal incarceration or other relative charges; thereby, such bail bondsperson assumes the risk and liability of such incarceration; and

(3) Bailpiece must be applied for by the bail bondsperson or his or her designee from the court's circuit clerk or magistrate and hand-delivered by the bail bondsperson or his or her designee to the jail housing such offender on the next judicial day following the initial intake.

(c) Any bail bondsperson who willfully fails to attempt to obtain the appropriate bailpiece within the allotted time period provided in subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be prohibited from continuing to conduct business in this state and shall be fined not more than $1,000 and confined in the regional jail not more than one year.

(d) No officer, jailer, or other person having authority to accept offenders in a regional jail is required to accept such offenders being housed in lieu of bailpiece except as set forth in §15A-5-9 of this code.

(e) The Division of Corrections and Rehabilitation, the county sheriff, county commission, or any of their agents or employees, shall be immune from liability for any claims of illegal incarceration or other relative charges for any offender accepted into a facility under this section.

§62-1C-15. Bail for witness.

The bail for a witness for or against the accused shall be conditioned upon his appearance at such time and place as the court or justice shall direct.

§62-1C-16. Guaranteed arrest bond certificate.

For a misdemeanor violation of any motor vehicle law of the state or any municipality, except reckless driving or driving while intoxicated, the guaranteed arrest bond certificate of any surety company licensed to do business by the Insurance Commissioner, when presented by the person whose signature appears thereon shall be accepted as bail in lieu of cash or recognizance in an amount not to exceed $500. A "guaranteed arrest bond certificate" shall mean any printed card or certificate issued by an automobile club or association to its members in good standing bearing the signature of the member and containing a printed statement that such club or association and a surety company will guarantee the payment of any fine or forfeiture imposed on the member in an amount not to exceed $500 if the member fails to appear in court as required.

§62-1C-17. Offenses against municipalities.

Bail for a person accused of an offense against a municipality shall be governed by the provisions of this article applicable to a justice, except that the bail may be deposited with the mayor or with such other officer of the municipality as may be designated by the mayor or other chief executive officer of the municipality, and proceedings for forfeiture shall be prosecuted in the name and for the benefit of the municipality.

§62-1C-17a. Bail in situations of alleged child abuse.

(a) When the offense charged is an offense defined in article eight-d, chapter sixty-one of this code, it shall be a condition of bond that the defendant shall not live in the same residence as and shall have no contact with the victim of the alleged offense and the court may make such other conditions of bond with respect to contact with the victim as it deems necessary under the circumstances to protect the child: Provided, That the requirement of no contact with the victim of the alleged offense and all other conditions of bond may be reviewed by summary petition from the magistrate court to the circuit court or from the circuit court to the Supreme Court of Appeals or any justice thereof.

(b) In cases where the charge is a sexual offense, as defined in chapter sixty-one of this code, against any person, the court, upon a showing of cause, may make such conditions of bond on the defendant or on any witness bond issued under section fifteen of this article as it deems necessary with respect to contact with the victim.

§62-1C-17b. Procedures for failure to appear; penalties.

(a) Any person, who, having been released upon his or her personal recognizance pursuant to §62-1-1a of this code or having been otherwise admitted to bail and released in accordance with this article, and who shall willfully and without just cause fail to appear as and when it may be required of him or her, shall be guilty of the offense as hereinafter prescribed, and, upon conviction thereof, shall be punished in the manner hereinafter provided.

(b) If any such person was admitted to bail or released after being arrested for, charged or convicted of a felony and, shall thereafter be convicted for a violation of the provisions of subsection (a) of this section, such persons shall be guilty of a felony and, shall be fined not more than $5,000 or imprisoned not less than one nor more than five years, or both such fine and imprisonment.

(c) If any such person was admitted to bail or released after being arrested for, charged or convicted of a misdemeanor and, shall thereafter be convicted for a violation of the provision of subsection (a) of this section, such persons shall be guilty of a misdemeanor and, shall be fined not more the $1,000 or confined in the county jail for not more than one year, or both such fine and confinement.

(d) If any such person was admitted to bail or released pending appearance as a material witness and shall thereafter fail to appear when and where it shall have been required of him or her, such persons shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more the $1,000 or confined in the county jail not more than one year, or both such fine and confinement.

(e) Any penalty authorized by this section shall be in addition to any forfeiture authorized or mandated by this article or by any other provision of law.

(f) If any defendant admitted to bail and released in accordance with this article fails to appear at a scheduled court appearance, the court may issue a capias or bench warrant for failure to appear if it determines that the defendant was provided effective notice of the court appearance by the court.

(g) For the purposes of this subsection, "effective notice of the court appearance" means a notice stating the date, time, location, and purpose of the hearing, transmitted to the defendant or defendant’s counsel, no fewer than 10 days prior to the scheduled court appearance. The court may waive the 10 day requirement upon a finding of emergent circumstances.

(h) For purposes of capiases for failure to appear after indictment, newspaper publication alone does not constitute effective notice.

(i) Notwithstanding the provisions of subsections (a) through (d) of this section, where the

record does not reflect that the person failing to appear received effective notice to appear from the court or where he or she has no documented history of failure to appear, a court, absent good cause shown, may not issue a capias until no fewer than 24 hours have elapsed since the failure to appear. If the defendant voluntarily appears within 24 hours, he or she is not subject to prosecution under this section.

(j) Nothing in subsection (f) of this section may be construed to limit a court's ability to issue a capias upon credible information of danger to a person or the community, new criminal conduct or a bail violation other than failure to appear.

(k) Upon the arrest of a defendant pursuant to a capias in the county in which the indictment or charge is pending, a hearing pursuant to §62-1C-1a of this code shall be scheduled and held within five days of the arrest.

(l) Upon the appearance in the county in which the indictment or charge is pending of a defendant against whom a capias has been issued the court shall provide written notice to the sheriff for his or her dissemination to all appropriate law-enforcement agencies, that the warrant or capias is no longer active and order it to be immediately removed from all databases.

§62-1C-17c. Bail in cases of crimes between family or household members.

(a) When the offense charged is a crime against a family or household member, it may be a condition of bond that the defendant shall not have any contact whatsoever, direct or indirect, verbal or physical, with the victim or complainant.

(b) In determining conditions of release, the issuing authority shall consider whether the defendant poses a threat or danger to the victim or other family or household member. If the issuing authority makes such a determination, it shall require as a condition of bail that the defendant refrain from entering the residence or household of the victim, the victim's school, and the victim's place of employment or otherwise contacting the victim and/or minor child or household member in any manner whatsoever, and shall refrain from having any further contact with the victim. A violation of this condition may be punishable by the forfeiture of bail and the issuance of a bench warrant for the defendant's arrest or remanding the defendant to custody or a modification of the terms of bail.

(c) The clerk of the court issuing an order pursuant to this section shall issue certified copies of the conditions of bail to the victim upon request without cost.

(d) Where a law-enforcement officer observes any violation of bail condition, including the presence of the defendant or at the home of the victim, the officer shall immediately arrest the defendant, and detain the defendant pending a hearing for revocation of bail.

§62-1C-18. Repeal of inconsistent laws.

All provisions of this code which are inconsistent with the provisions of this article are hereby repealed to the extent and only to the extent of such inconsistency.

§62-1C-19. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or its application, and to this end, the provisions of this article are declared to be severable.

§62-1D-1. Short title.

This act shall be known and may be cited as the "West Virginia Wiretapping and Electronic Surveillance Act."

§62-1D-2. Definitions.

As used in this article, unless the context in which used clearly requires otherwise, the following terms have the meanings indicated:

(a) "Aggrieved person" means a person who was a party to any intercepted wire, oral or electronic communication or a person against whom the interception was directed.

(b) "Child care center" means a facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association or organization, public or private, that is licensed by Bureau of Family Assistance for the care of children in any setting.

(c) "Communications common carrier" means any telegraph company or telephone company and any radio common carrier.

(d) "Contents" when used with respect to any wire, oral or electronic communication, includes any information concerning the substance, purport or meaning of that communication.

(e) "Electronic, mechanical or other device" means any device or apparatus: (i) Which can be used to intercept a wire, oral or electronic communication; or (ii) the design of which renders it primarily useful for the surreptitious interception of any such communication. There is excepted from this definition:

(1) Any telephone or telegraph instrument, equipment or facility or any component thereof: (a) Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or furnished by the subscriber or user for connection to the facilities of the service and used in the ordinary course of its business; or (b) being used by a communications common carrier in the ordinary course of its business or by an investigative or law-enforcement officer in the ordinary course of his or her duties; or

(2) A hearing aid or similar device being used to correct subnormal hearing to not better than normal; or

(3) Any device used in a lawful consensual monitoring including, but not limited to, tape recorders, telephone induction coils, answering machines, body transmitters and pen registers.

(f) "Intercept" means the aural or other acquisition of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device.

(g) "Designated judge" means a circuit court judge designated by the Chief Justice of the West Virginia Supreme Court of Appeals to hear and rule on applications for the interception of wire, oral or electronic communications.

(h) "Investigative or law-enforcement officer" means a member or members of the West Virginia State Police who is or are empowered by law to conduct investigations of or to make arrest for offenses enumerated in this chapter.

(i) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying the expectation. The term does not include:

(A) An electronic communication; or

(b) An oral communication uttered in any child care center where there are written notices posted informing persons that their oral communications are subject to being intercepted.

(j) "Pen register" means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which the device is attached, but the term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by the provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.

(k) "Person" means any person, individual, partnership, association, joint stock company, trust or corporation and includes any police officer, employee or agent of this state or of a political subdivision thereof.

(l) "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception (including the use of the connection in a switching station) furnished or operated by any person engaged in providing or operating the facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce and the term includes any electronic storage of the communication, but the term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

(m) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electro-magnetic, photoelectronic or photooptical system but does not include:

(1) The radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

(2) Any wire or oral communication; or

(3) Any combination made through a tone-only paging device.

(n) "User" means any person or entity who or which uses an electronic communication service and is duly authorized by the provider of the service to engage in the use.

(o) "Electronic communications system" means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of the communications.

(p) "Electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications.

(q) "Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

(r) "Trap and trace device" means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

§62-1D-3. Interception of communications generally.

(a) Except as otherwise specifically provided in this article it is unlawful for any person to:

(1) Intentionally intercept, attempt to intercept or procure any other person to intercept or attempt to intercept, any wire, oral or electronic communication; or

(2) Intentionally disclose or intentionally attempt to disclose to any other person the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral or electronic communication in violation of this article; and

(3) Intentionally use or disclose or intentionally attempt to use or disclose the contents of any wire, oral or electronic communication or the identity of any party thereto, knowing or having reason to know that such information was obtained through the interception of a wire, oral or electronic communication in violation of this article.

(b) Any person who violates subsection (a) of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary for not more than five years or fined not more than $10,000 or both fined and imprisoned.

(c) It is lawful under this article for an operator of a switchboard or an officer, employee, or provider of any wire or electronic communication service whose facilities are used in the transmission of a wire communication to intercept, disclose or use that communication or the identity of any party to that communication in the normal course of his or her employment while engaged in any activity which is a necessary incident to the rendition of his or her service or to the protection of the rights or property of the carrier of the communication. Providers of wire or electronic communication services may not utilize service observing or random monitoring except for mechanical or service quality control checks.

(d) Notwithstanding any other law, any provider of wire or electronic communications services, or the directors, officers, employees, agents, landlords or custodians of any such provider, are authorized to provide information, facilities or technical assistance to persons authorized by this article to intercept wire, oral or electronic communication if such provider or its directors, officers, employees, agents, landlords or custodians has been provided with a duly certified copy of a court order directing such assistance and setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities or assistance required. No cause of action shall lie in any court against any such provider of wire or electronic communication services, its directors, officers, agents, landlords or custodians for providing information facilities or assistance in accordance with the terms of any such order.

(e) It is lawful under this article for a person to intercept a wire, oral or electronic communication where the person is a party to the communication or where one of the

parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or the constitution or laws of this state:

(f) Notwithstanding the provisions of this article or any other provision of law, an electronic interception as defined by section one, article one-f of this chapter, is regulated solely by the provisions of article one-f of this chapter, and no penalties or other requirements of this article are applicable.

§62-1D-4. Manufacture, possession or sale of intercepting device.

(a) Except as otherwise specifically provided in this article, any person who manufactures, assembles, possesses or sells any electronic, mechanical or other device, knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the illegal interception of wire, oral or electronic communications is guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for not more than one year or fined not more than $5,000 or both so fined and imprisoned.

(b) It is lawful under this section for:

(1) A provider of wire or electronic communication services or an officer, agent, or employee of, or a person under contract with, any such provider, in the normal course of business of the provider to manufacture, assemble, possess or sell any electronic, mechanical or other device which is designed for or which is primarily useful for the purpose of the illegal interception of wire, oral or electronic communications;

(2) A person under contract with the United States, a state, a political subdivision of a state, or the District of Columbia, in the normal course of the activities of the United States, a state, a political subdivision thereof, or the District of Columbia, to manufacture, assemble, possess or sell any electronic, mechanical or other device which is designed for or which is primarily useful for the purpose of the illegal interception of wire, oral or electronic communications;

(3) An officer, agent or employee of the United States in the normal course of his or her lawful activities to manufacture, assemble, possess or sell any electronic, mechanical or other device which is designed for or which is primarily useful for the purpose of the illegal interception of wire, oral or electronic communications. However, any sale made under the authority of this subdivision may only be for the purpose of lawfully disposing of obsolete or surplus devices;

(4) An officer, agent or employee of a law-enforcement agency of this state or a political subdivision of this state in the normal course of his or her lawful activities to assemble or possess any electronic, mechanical or other device which is designed for or which is primarily useful for the purpose of the illegal interception of wire, oral or electronic communications, if the particular officer, agent or employee is specifically authorized by the chief administrator of the law-enforcement agency to assemble or possess the device for a particular law-enforcement purpose and the device is registered in accordance with this article.

§62-1D-5. Forfeiture of device.

Any electronic, mechanical or other device used, manufactured, assembled, possessed or sold in violation of either sections three or four of this article may be seized by and forfeited to the department of public safety.

§62-1D-6. Admissibility of evidence.

Evidence obtained, directly or indirectly, by the interception of any wire, oral, or electronic communication shall be received in evidence only in grand jury proceedings and criminal proceedings in magistrate court, circuit court, and any other court of competent jurisdiction: Provided, That evidence obtained in violation of the provisions of this article shall not be admissible in any proceeding.

§62-1D-7. Designated judges.

The chief justice of the Supreme Court of Appeals shall, on an annual basis, designate five active circuit court judges to individually hear and rule upon applications for orders authorizing the interception of wire, oral or electronic communications: Provided, That no designated circuit judge may consider any application for such an order if he or she presides as judge of the circuit court of the county wherein the applied for installation would occur or of the county wherein the communications facility, line or device to be monitored is located.

§62-1D-8. County prosecuting attorney or duly appointed special prosecutor may apply for order authorizing interception.

The prosecuting attorney of any county or duly appointed special prosecutor may apply to one of the designated circuit judges referred to in §62-1D-7 of this code and the judge, in accordance with the provisions of this article, may grant an order authorizing the interception of wire, oral, or electronic communications by an officer of the investigative or law-enforcement agency when the prosecuting attorney or special prosecutor has shown reasonable cause to believe the interception would provide evidence of the commission of: (1) Kidnapping or abduction, as defined and prohibited by the provisions of §61-2-14 and §61-2-14a of this code and including threats to kidnap or demand ransom, as defined and prohibited by the provisions of §61-2-14c of this code; (2) any offense included and prohibited by §25-4-11, §61-5-8, §61-5-9, and §61-5-10 or §62-8-1 of this code to the extent that any of said sections provide for offenses punishable as a felony; (3) felony violations of §60A-1-101 et seq. of this code; (4) violations of §61-14-1 et seq. of this code; (5) violations of §61-2-1 of this code; (6) violations of §61-2-12 of this code; (7) felony violations of §61-8B-1 et seq. of this code; (8) violations of §61-1-1 of this code; (9) violations of §61-13-3 of this code; (10) extortion, as defined in §61-2-13 of this code; or (11) any aider or abettor to any of the offenses referenced in this section or any conspiracy to commit any of the offenses referenced in this section if any aider, abettor, or conspirator is a party to the communication to be intercepted.

§62-1D-9. Lawful disclosure or use of contents of communication.

(a) Any investigative or law-enforcement officer who has obtained knowledge of the contents of any wire, oral, or electronic communication or evidence derived therefrom, may disclose the contents to another investigative or law-enforcement officer of any state or any political subdivision thereof, the United States or any territory, protectorate, or possession of the United States, including the District of Columbia, only to the extent that the disclosure is required for the proper performance of the official duties of the officer making or receiving the disclosure, however, a record of such disclosure and the date, time, method of disclosure, and the name of the person or persons to whom disclosure is made shall be forwarded, under seal, to the designated circuit judge who authorized such interception, who shall preserve said record for not less than 10 years. In the event the designated judge shall leave office prior to the expiration of this 10-year period, he or she shall transfer possession of said record to another designated judge.

(b) Any investigative or law-enforcement officer who has obtained knowledge of the contents of any wire, oral, or electronic communication or evidence derived therefrom or any investigative or a law-enforcement officer of any state or any political subdivision thereof, the United States or any territory, protectorate or possession of the United States, including the District of Columbia, who obtains such knowledge by lawful disclosure may use the contents to the extent that the use is appropriate to the proper performance of his or her official duties under the provisions of this article.

(c) Any person who has received any information concerning a wire, oral, or electronic communication intercepted in accordance with the provisions of this article or evidence derived therefrom, may disclose the contents of that communication or the derivative evidence while giving testimony under oath or affirmation in any criminal proceeding held under the authority of this state, any political subdivision of this state, or the federal courts of the United States.

(d) An otherwise privileged wire, oral, or electronic communication intercepted in accordance with, or in violation of, the provisions of this article does not lose its privileged character: Provided, That when an investigative or law-enforcement officer, while engaged in intercepting wire, oral, or electronic communications in the manner authorized by this article, intercepts a wire, oral, or electronic communication and it becomes apparent that the conversation is attorney-client in nature, the investigative or law-enforcement officer shall immediately terminate the monitoring of that conversation: Provided, however, That notwithstanding any provision of this article to the contrary, no device designed to intercept wire, oral, or electronic communications shall be placed or installed in such a manner as to intercept wire, oral, or electronic communications emanating from the place of employment of any attorney at law, licensed to practice law in this state.

(e) When an investigative or law-enforcement officer, while engaged in intercepting wire, oral, or electronic communications in the manner authorized herein, intercepts wire, oral, or electronic communications relating to offenses other than those specified in the order of

authorization, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in §62-1D-9(a) and §62-1D-9(b) of this code. Such contents and any evidence derived therefrom may be used under §62-1D-9(c) of this code when authorized or approved by the designated circuit judge where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this article. The application shall be made as soon as may be practicable after such contents or the evidence derived therefrom is obtained.

(f) Any law-enforcement officer of the United States, who has lawfully received any information concerning a wire, oral, or electronic communication or evidence lawfully derived therefrom, may disclose the contents of that communication or the derivative evidence while giving testimony under oath or affirmation in any criminal proceeding held under the authority of this state or of the United States.

(g) Any information relating to criminal activities other than those activities for which an order to intercept communications may be granted pursuant to §62-1D-8 of this code may be disclosed only if such relates to the commission of a felony under the laws of this state or of the United States, and such information may be offered, if otherwise admissible, as evidence in any such criminal proceeding.

§62-1D-10. Pen registers and trap and trace devices.

(a) Except as provided in this section, no person may install or use a pen register or a trap and trace device without first obtaining permission to do so from the designated judge by order granted in the same manner as is required for an order granting permission to intercept any wire, oral or electronic communication.

(b) The prohibition of subsection (a) does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service:

(1) Relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

(2) To record the fact that a wire or electronic communication was initiated or completed in order to protect such provider or another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service; or

(3) With the consent of the user of that service.

(c) The prosecuting attorney of any county or any duly appointed special prosecutor may make application for an order or an extension of an order under this section authorizing or approving the installation and use of a pen register or a trap and trace device in writing under oath or affirmation, to the designated judge. Such application shall be made in the same manner as set forth in section ten of this article.

(d) Upon application made to the court as provided in subsections (a) and (b) of this section, the designated judge shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device if the designated judge finds that the applicant has certified to the court that the information likely to be obtained by such installation and used is relevant to an ongoing criminal investigation.

(e) An order issued under this section shall relate with specificity (i) The identity of the person to whom the telephone line to which the pen register or trap and trace device is to be attached is leased or in whose name such telephone is listed, (ii) the identity, if known, of the person who is the subject of the criminal investigation, (iii) the number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order, and (iv) a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates. Such order shall also direct, upon the request of the applicant, the furnishing of information, facilities and technical assistance necessary to accomplish the installation of the pen register or trap and trace device.

(f) An order issued under this section shall authorize the installation and use of a pen

register or a trap and trace device for a period not to exceed thirty days. One extension of such thirty-day period may be granted by order of the designated judge upon application if such judge makes the same findings as required by subsections (c) and (d) of this section.

(g) An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that (i) the order be sealed until otherwise ordered by the court; and (ii) the person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

(h) Upon the request of an officer of a law-enforcement agency authorized to install and use a pen register or a trap and trace device under this section, or an attorney acting in behalf of such agency or officer, a provider of wire or electronic communication service, landlord, custodian or other person shall furnish such investigative or law-enforcement officer forthwith all information, facilities and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order. Unless otherwise ordered by the designated judge, the results of the trap and trace device shall be furnished to the office of the law-enforcement agency, designated by the court, at reasonable intervals during regular business hours for the duration of the period during which the pen register or trap and trace device is installed as provided in such order.

(i) A provider of a wire or electronic communication service, landlord, custodian or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for services so rendered and shall be reimbursed for reasonable expenses incurred in providing such facilities and assistance.

(j) No cause of action shall lie against any provider of a wire or electronic communication service, its officers, agents or employees for providing information, facilities or assistance provided or rendered in accordance with the terms of any court order entered pursuant to this section.

§62-1D-11. Ex parte order authorizing interception.

(a) Each application for an order authorizing the interception of a wire, oral or electronic communication shall be made only to a designated judge by petition in writing upon oath or affirmation and shall state the applicant's authority to make the application. Each application shall set forth the following:

(1) The identity of the member of the department of public safety making the application, and of the officer authorizing the application, who shall be the superintendent of the department of public safety;

(2) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify his or her belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) a particular description of the nature and location of the facilities from which, or the place where, the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, and (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(3) A full and complete statement showing that other investigative procedures have been tried and failed and why such procedures reasonably appear to be unlikely to succeed if again attempted or that to do so would be unreasonably dangerous and likely to result in death or injury or the destruction of property;

(4) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe additional communications of the same type will occur thereafter;

(5) A full and complete statement of the facts concerning all previous applications known to the person authorizing and making the application, for authorization to intercept wire, oral or electronic communications involving any of the same persons, facilities or places specified in the application and the action taken by the court with respect to each such application; and

(6) Where the application is for the extension of an order, a statement setting forth the results obtained pursuant to such order from the interception or a reasonable explanation of the failure to obtain any such results.

(b) The designated judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(c) Upon the application, the designated judge may enter an ex parte order, as requested or as modified or moulded, authorizing interception of wire, oral or electronic communications,

if the judge determines on the basis of the evidence and argument presented by the applicant that:

(1) There is probable cause to believe that one or more individuals are committing, have committed, or are about to commit one or more of the particular offenses enumerated in section eight of this article;

(2) There is probable cause for belief that particular communications concerning such offense or offenses will be obtained through the interception;

(3) Normal investigative procedures have been tried and have failed and reasonably appear to be unlikely to succeed if attempted again, or that to do so would be unreasonably dangerous and likely to result in death or injury or the destruction of property; and

(4) There is probable cause to believe that the facilities from which, or the place where, the wire, oral or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or offenses are leased to, listed in the name of, or commonly used by this person.

(d) (1) Each order authorizing the interception of any wire, oral or electronic communication shall specify: (i) The identity of the person, if known, whose communications are to be intercepted, (ii) the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted, (iii) a particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates, (iv) the identity of members of the department of public safety authorized to intercept the communications and of the person authorizing the applications and (v) the period of time during which the interception is authorized, including a statement as to whether or not the interception automatically terminates when the described communication is first obtained.

(2) If an order authorizing the interception of a wire, oral or electronic communication is issued, an additional order may be issued upon petition of the applicant, directing that a provider of wire or electronic communication service, landlord, custodian or other person named in such order, furnish the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that the carrier, landlord, custodian or person is according the person whose communications are to be intercepted. Such additional order shall set forth the period of time authorized for providing the information, facilities or technical assistance and shall specify the information, facilities or technical assistance required. In no event may a communications common carrier, its directors, officers, employees and agents, landlords, custodians or other persons be ordered to furnish, install or maintain the electronic, mechanical or other device being used to accomplish the authorized interception, to grant entry into or upon its premises for the purposes of such interception, or to otherwise provide assistance of any nature other than information, facilities or technical assistance. Any provider of wire or electronic communication service, landlord, custodian or other person

furnishing the facilities or technical assistance shall be reasonably compensated therefor by the applicant for such services and be reimbursed for the reasonable expenses incurred in providing such facilities or assistance.

(e) An order entered pursuant to this section may authorize the interception of any wire, oral or electronic communication for a period of time that is necessary to achieve the objective of the authorization, not to exceed twenty days. Such twenty-day period begins on the day on which the investigative or law-enforcement officer first begins to conduct an interception under the order or ten days after the order is entered, whichever is earliest. Extensions of an order may be granted, but only upon application for an extension made as provided in subsection (a) of this section and upon the court making the findings required by subsection (c) of this section. The period of extension may be no longer than the designated judge deems necessary to achieve the purposes for which it was granted and, in no event, for longer than twenty days. Every order and extension thereof shall contain a provision that the authorization to intercept be executed as soon as practicable, be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this article and terminate upon attainment of the authorized objective, or in any event within the hereinabove described twenty-day period relating to initial applications. In addition, every such order and extension thereof shall contain a provision requiring termination of the interception during any communication to which none of the parties thereto is a person identifed as committing the offense in the statement of facts referred to in subsection (a) and there is no reasonable suspicion that any party to such communication is committing such offense: Provided, That such provision shall permit such interception up to the point of time that the person authorized to intercept the communication knows or has reason to know the identities of the parties thereto.

(f) Whenever an order authorizing the interception of any wire, oral or electronic communication is entered pursuant to this article, the order shall require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at the intervals required by such order.

(g) The contents of any wire, oral or electronic communication intercepted by any means authorized by this article shall be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral or electronic communication under this subsection shall be done in such a way or ways as will protect the recording from editing or alterations thereto. Immediately upon the expiration of the period of time during which interception and recording is authorized by the order, or extensions thereof, such recordings shall be made available to the judge issuing such order. Custody of the recordings shall be with the superintendent of the department of public safety. Such recordings may not be destroyed except upon an order of the judge to whom application was made and in any event shall be retained for a period of ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections (a) and (b), section nine of this article for investigations by law-enforcement agencies.

(h) Applications made and orders granted under this article shall be ordered sealed by the court and shall remain in his or her custody. The applications and orders may be disclosed only upon a showing of good cause and may not be destroyed except upon order of such designated judge and in any event shall be kept for not less than ten years. In the event the designated judge shall leave office prior to the expiration of this ten-year period, he or she shall transfer possession of said applications and orders to another designated judge.

(i) Any violation of the provisions of this section may be punished as for criminal contempt of court by the designated judge to whom application was made.

(j) Within sixty days of the termination of the ordered interception of wire, oral or electronic communications, the superintendent of the department of public safety shall provide the designated judge who issued said order a list containing the names and addresses of all persons whose communications were intercepted. Within a reasonable time, but not later than ninety days after the termination of the period specified in an order permitting the interception of any wire, oral or electronic communication or extensions thereof, the designated judge shall cause to be served upon the persons named in the order and such other parties to intercepted communications as the designated judge may determine in his or her discretion that the interest of justice requires written notice of the interception of communications. Such written notice shall include: (i) the fact of the entry of the order, (ii) the date of the entry and the period of authorized interception and (iii) the fact that during the period wire, oral or electronic communications were or were not intercepted: Provided, That the service of such notice shall be the sole responsibility of the superintendent of the department of public safety.

The designated judge shall, upon motion therefor, make available for inspection by such person or his or her counsel all of the intercepted communications, applications and orders pertaining to that person and the alleged offense for which the interception was requested and granted.

(k) The contents of any intercepted wire, oral or electronic communication or evidence derived therefrom may not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court of this state unless each party, not less than twenty days before the trial, hearing or proceeding at which the communication or evidence is to be presented has been furnished with a copy of the written petition or application and order under which the interception was authorized. Where no application or order is required under the provisions of this article, each party, not less than twenty days before any such trial, hearing or proceeding shall be furnished with information concerning when, where and how the interception took place and why no application or order was required.

(l) Any aggrieved person in any trial, hearing or proceeding in or before any court of this state may move to suppress the contents of any intercepted wire, oral or electronic communication or evidence derived therefrom on the grounds that (i) the communication was unlawfully intercepted; (ii) the order of authorization under which it was intercepted is insufficient on its face or was not obtained or not issued in strict compliance with this

article; or (iii) the interception was not made in conformity with the order of authorization. Such motion may be made before or during the trial, hearing or proceeding. If the motion is granted, the contents of the intercepted wire, oral or electronic communication or evidence derived therefrom, shall not be admissible in evidence, in any such trial, hearing or proceeding. The designated judge, upon the filing of such motion shall make available to the movant thereof or to his or her counsel the intercepted communication or evidence derived therefrom for inspection.

§62-1D-12. Civil liability; defense to civil or criminal action.

(a) Any person whose wire, oral or electronic communication is intercepted, disclosed, used or whose identity is disclosed in violation of this article shall have a civil cause of action against any person who so intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use the communications, and shall be entitled to recover from any such person or persons:

(1) Actual damages, but not less than $100 for each day of violation;

(2) Punitive damages, if found to be proper; and

(3) Reasonable attorney fees and reasonable costs of litigation incurred.

(b) A good faith reliance by a provider of electronic or wire communication services on a court order or legislative authorization constitutes a complete defense to any civil or criminal action brought under this article or any other law.

§62-1D-13. Registration of intercepting devices; serial number.

(a) Law-enforcement agencies in the state shall register with the department of public safety all electronic, mechanical or other devices whose design renders them primarily useful for the purposes of the surreptitious interception of wire, oral or electronic communications which are owned by them or possessed by or in the control of the agency, their employees or agents. All such devices shall be registered within ten days from the date on which the devices come into the possession or control of the agency, its employees or agents.

(b) Such registration shall include the name and address of the agency as well as a detailed description of each device registered, the serial number thereof and such other information as the department may require.

(c) A registration number shall be issued for each device registered pursuant to this section, which number shall be permanently affixed or indicated upon such device.

§62-1D-14. Breaking and entering, etc., to place or remove equipment.

Any person who trespasses upon any premises with the intent to place, adjust or remove wiretapping or electronic surveillance or eavesdropping equipment without an order from the designated judge authorizing the same is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not more than five years.

§62-1D-15. Training and certification of law-enforcement officers employed in the interception of wire, oral or electronic communications which require a court order.

The superintendent of the department of public safety shall establish a course of training in the legal and technical aspects of wiretapping and electronic surveillance, shall establish such regulations as he or she deems necessary and proper for such training program, and shall establish minimum standards for certification and periodic recertification of investigative or law-enforcement officers as eligible to conduct wiretapping or electronic surveillance as authorized by this article.

§62-1D-16. Severability of provisions.

The various provisions of this article shall be construed as separable and severable, and should any of the provisions or parts thereof be construed or held unconstitutional or for any reason be invalid, the remaining provisions of this article shall not be thereby affected.

§62-1E-1. Definitions.

For the purposes of this article:

(1) "Administrator" means the person conducting the live lineup, photo lineup or showup.

(2) "Suspect" means the person believed by law enforcement to be the possible perpetrator of the crime.

(3) "Blind" means the administrator does not know the identity of the suspect.

(4) "Blinded" means the administrator may know who the suspect is, but does not know which lineup member is being viewed by the eyewitness.

(5) "Eyewitness" means a person whose identification of another person may be relevant in a criminal proceeding.

(6) "Filler" means either a person or a photograph of a person who is not suspected of an offense and is included in an identification procedure.

(7) "Folder shuffle method" means a procedure for displaying a photo lineup with the following steps:

(A) Photos used in a photo lineup are placed in their own respective folder, and the folders are shuffled, numbered and then presented to an eyewitness such that the administrator cannot see or track which photo is being presented to the witness until after the procedure is completed;

(B) The procedure is completed only when the eyewitness has viewed the entire array of numbered folders, even if an affirmative identification is made prior to the eyewitness viewing all of the numbered folders;

(C) If an eyewitness requests a second viewing, the eyewitness must be shown all of the lineup members again, even if the eyewitness makes an identification during this second showing; and

(D) The eyewitness shall be allowed to review the folders only once after the initial viewing is complete.

(8) "Lineup" means a live lineup or photo lineup of persons or photographs of persons matching as close as possible the eyewitness's description of the perpetrator.

(9) "Live lineup" means a procedure in which a group of people is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.

(10) "Photo lineup" means a procedure in which an array of photographs is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.

(11) "Sequential presentation" means presenting live or photo lineup persons to the eyewitness one-by-one rather than all at once.

(12) "Showup" means an identification procedure in which an eyewitness is presented with a single suspect for the purpose of determining whether the eyewitness identifies this individual as the perpetrator.

§62-1E-2. Eyewitness identification procedures.

(a) Prior to a lineup or showup, law enforcement should record as complete a description as possible of the perpetrator provided by the eyewitness, in the eyewitness's own words. This statement should also include information regarding the conditions under which the eyewitness observed the perpetrator including location, time, distance, obstructions, lighting and weather conditions. The eyewitness should also be asked if he or she wears or has been prescribed glasses or contact lenses and whether he or she was wearing them at the time of the witnessed event. The administrator should record whether or not the eyewitness was wearing glasses or contact lenses at the time of the lineup or showup.

(b) After completing the requirements of subsection (a) of this section, but before a lineup or showup, the eyewitness should be given the following instructions:

(1) That the perpetrator may or may not be present in the lineup, or, in the case of a showup, may or may not be the person that is presented to the eyewitness;

(2) That the eyewitness is not required to make an identification;

(3) That it is as important to exclude innocent persons as it is to identify the perpetrator;

(4) That the investigation will continue whether or not an identification is made; and

(5) That the administrator does not know the identity of the perpetrator.

(c) Nothing should be said, shown or otherwise suggested to the eyewitness that might influence the eyewitness's identification of any particular lineup or showup member, at any time prior to, during or following a lineup or showup.

(d) All lineups should be conducted blind unless to do so would place an undue burden on law enforcement or the investigation. If conducting a blind lineup would place an undue burden on law enforcement or the investigation, then the administrator shall use the folder shuffle method.

(e) All lineups should be conducted in a sequential presentation. When there are multiple suspects, each identification procedure shall include only one suspect.

(f) At least four fillers should be used in all lineups. The fillers shall resemble the description of the suspect as much as practicable and shall not unduly stand out.

(g) In a photo lineup, there should be no characteristics of the photos themselves or the background context in which they are placed which shall make any of the photos unduly stand out.

(h) In a live lineup, all lineup participants must be out of view of the eyewitness prior to the identification procedure.

(i) If there are multiple eyewitnesses for the same lineup:

(1) Each eyewitness should view the lineup or lineups separately;

(2) The suspect should be placed in a different position in the lineup for each eyewitness; and

(3) The eyewitnesses should not be permitted to communicate with each other until all identification procedures have been completed.

(j) Showups should only be performed using a live suspect and only in exigent circumstances that require the immediate display of a suspect to an eyewitness. A law-enforcement official shall not conduct a showup with a single photo; rather a photo lineup must be used.

(k) Law-enforcement officers should make a written or video record of a lineup which shall be provided to the prosecuting attorney in the event that any person is charged with the offense under investigation. The written record shall include all steps taken to comply with this article which shall include the following information:

(1) The date, time and location of the lineup;

(2) The names of every person in the lineup, if known, and all other persons present at the lineup;

(3) The words used by the eyewitness in any identification, including words that describe the eyewitness's certainty or uncertainty in the identification at the time the identification is made;

(4) Whether it was a photo lineup or live lineup;

(5) The number of photos or individuals that were presented in the lineup;

(6) Whether the lineup administrator knew which person in the lineup was the suspect;

(7) Whether, before the lineup, the eyewitness was instructed that the perpetrator might or might not be presented in the lineup;

(8) Whether the lineup was simultaneous or sequential;

(9) The signature, or initials, of the eyewitness, or notation if the eyewitness declines or is unable to sign; and

(10) A video of the lineup and the eyewitness's response may be included.

§62-1E-3. Training of law-enforcement officers.

The Superintendent of State Police may create educational materials and conduct training programs to instruct law-enforcement officers and recruits how to conduct lineups in compliance with this section. Any West Virginia law-enforcement agency, as defined in section one, article twenty-nine, chapter thirty of this code, conducting eyewitness identification procedures shall adopt specific written procedures for conducting photo lineups, live lineups and showups that comply with this article on or before January 1, 2014.

§62-1F-1. Definitions.

(a) For the purposes of this article, the following terms have the following meanings:

(1) "Body wire" means: (a) An audio and/or video recording device surreptitiously carried on or under the control of an investigative or law-enforcement officer or informant to simultaneously record a nonconsenting party's conduct or oral communications; or (2) radio equipment surreptitiously carried on or under the control of an investigative or law-enforcement officer or informant to simultaneously transmit a nonconsenting party's conduct or oral communications to recording equipment located elsewhere or to other law-enforcement officers monitoring the radio transmitting frequency.

(2) "Home" means the residence of a nonconsenting party to an electronic interception, provided that access to the residence is not generally permitted to members of the public and the non-consenting party has a reasonable expectation of privacy in the residence under the circumstances.

(3) "Informant" means a person acting in concert with and at the direction of a law-enforcement officer in the investigation of possible violations of the criminal laws of this state or the United States.

(4) "Investigative or law-enforcement officer" means any officer empowered by law to conduct investigations of or to make arrests for criminal offenses enumerated in this code or an equivalent offense in another jurisdiction.

(5) "Electronically intercept" or "electronic interception" mean the simultaneous recording with a body wire of a nonconsenting party's conduct or oral communications in his or her home by an investigative or law-enforcement officer or informant who is invited into the home and physically present with the nonconsenting party in the home at the time of the recording.

(b) Words and phrases that are not defined in this article, but which are defined in article one-d of this chapter, shall have the same meanings established in article one-d unless otherwise noted.

§62-1F-2. Electronic interception of conduct or oral communications in the home authorized.

(a) Prior to engaging in electronic interception, as defined in section one of this article, an investigative or law-enforcement officer shall, in accordance with this article, first obtain from a magistrate or a judge of a circuit court within the county wherein the nonconsenting party's home is located an order authorizing said interception. The order shall be based upon an affidavit by the investigative or law-enforcement officer or an informant that establishes probable cause that the interception would provide evidence of the commission of a crime under the laws of this state or the United States.

(b) The Legislature hereby requests the Supreme Court of Appeals to promptly undertake all necessary actions and promulgate any requisite rules to assure a magistrate or circuit judge is available after normal business hours to authorize warrants.

§62-1F-3. Application for an order authorizing interception.

(a) Each application for an order authorizing electronic interception in accordance with the provisions of this article shall be made only to the magistrate or judge of the circuit court by petition in writing upon oath or affirmation and shall state the applicant's authority to make the application. Each application shall set forth the following:

(1) The identity of the investigative or law-enforcement officer making the application, and of the person authorizing the application, who shall be the head of the investigative or law-enforcement agency or an officer of the investigative or law-enforcement agency designated in writing by the head of that agency: Provided, That an application made by a member of the State Police or an officer assigned to a multijurisdictional task force authorized under section four, article ten, chapter fifteen of this code also may be authorized by the supervisor of that member or officer if the supervisor holds a rank of sergeant or higher;

(2) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify his or her belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) a description of the person whose conduct or communications are sought to be intercepted and a particular description of the home at which it is anticipated that the interception would occur: Provided, That the description of the home may be omitted where there is good cause to believe that the location is subject to change, (iii) a particular description of the type of conduct or communications sought to be intercepted, and (iv) the identity of the person, if known, committing the offense and whose conduct or communications are to be intercepted;

(3) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described conduct or communication has been first obtained, a particular description of facts establishing probable cause to believe additional conduct or communications of the same type will occur thereafter; and

(4) Where the application is for the extension of an order, a statement setting forth the results obtained pursuant to such order from the interception or a reasonable explanation of the failure to obtain any such results.

(b) The magistrate or judge of the circuit court may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(c) Notwithstanding the provisions of subsection (a) of this section, the magistrate or judge may take an oral statement under oath in which the applicant must set forth the information required in subsection (a) of this section. The applicant shall swear the oath by telephone. A magistrate or judge administering an oath telephonically under this subsection shall execute a declaration that recites the manner and time of the oath's administration. The oral statement shall be recorded. The recording shall be considered to be an application for the purposes of this section. In such cases, the recording of the sworn oral statement and the

transcribed statement shall be certified by the magistrate or judge receiving it and shall be retained as a part of the record of proceedings for the issuance of the order.

§62-1F-4. Order authorizing interception.

(a) Upon application filed pursuant to the provisions of section three of this article, the magistrate or judge of the circuit court may enter an ex parte order, as requested or as modified or moulded, authorizing an electronic interception in a home if the magistrate or judge determines on the basis of the evidence and argument presented by the applicant that:

(1) There is probable cause to believe that one or more individuals are committing, have committed, or are about to commit one or more specified crimes under the laws of this state or the United States will be obtained through interception; and

(2) There is probable cause to believe that the home where the electronic interception is to occur is being used, or is about to be used, in connection with the commission of the offense, or offenses: Provided, That such determination shall not be required where the identity of the person committing the offense and whose conduct or communications are to be intercepted is known, and the applicant makes an adequate showing as required pursuant to paragraph (ii), subdivision two, subsection (a), section three of this article that the location cannot be predetermined.

(b) Each order authorizing an electronic interception in accordance with the provisions of this article shall specify: (i) The identity of the person, if known, whose conduct or communications are to be intercepted; (ii) the nature and location of the home for which authority to intercept is granted, if necessary under subdivision three, subsection (a) of this section; (iii) a particular description of the type of conduct or communications sought to be intercepted and a statement of the particular offense to which it relates; (iv) the identity of the law-enforcement officer or officers applying for authorization to electronically intercept and of the officer authorizing the application; and (v) the period of time during which the interception is authorized, including a statement as to whether or not the interception automatically terminates when the described conduct or communication is first obtained.

(c) An order entered pursuant to the provisions of this section may authorize the electronic interception for a period of time that is necessary to achieve the objective of the authorization, not to exceed twenty days. Such twenty-day period begins on the day the order is entered. Extensions of an order may be granted, but only upon application for an extension made as provided in subsection (a) of this section and upon the magistrate or judge of the circuit court making the findings required by subsection (b) of this section. The period of extension may be no longer than the magistrate or judge deems necessary to achieve the purposes for which it was granted and, in no event, for longer than twenty days. Every order and extension thereof shall contain a provision that the authorization to electronically intercept be executed as soon as practicable, be conducted in such a way as to minimize the interception of conduct or communications not otherwise subject to interception under this article and terminate upon attainment of the authorized objective, or in any event within the hereinabove described twenty-day period relating to initial applications.

§62-1F-5. Recording of intercepted communications.

(a) If recorded, the contents of any conduct or oral communications electronically intercepted shall be recorded on tape or wire or other comparable device and done in such a way or ways as will protect the recording from editing or alterations thereto.

(b) Whenever practicable, the investigative or law-enforcement officer overseeing the recording of an electronic interception shall keep a signed, written record of:

(1) The date and hours of the surveillance;

(2) The time and duration of each electronic interception;

(3) The participants, if known, in each electronic interception; and

(4) A summary of the content of each intercepted communication.

(c) Immediately upon the expiration of the period of time during which interception and recording is authorized by the order, or extensions thereof, such recordings shall be made available, if requested, to the magistrate or judge issuing such order. Custody of the recordings shall be with the law-enforcement officer authorizing the application underlying the order. Such recordings may not be destroyed except upon an order of the magistrate or judge to whom application was made or a circuit judge presiding over any subsequent prosecution related to the electronic interception. The records shall be maintained by the magistrate court clerk or circuit clerk of the county where the application was filed. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections (a) and (b), section nine, article one-d of this chapter for investigations by law-enforcement agencies.

§62-1F-6. Sealing of applications, orders and supporting papers.

Applications made and orders granted under this article shall be ordered sealed by the magistrate or judge of the circuit court to whom the application is made, and maintained under seal in the custody of the magistrate court clerk or the circuit clerk of the county in where the application was filed. The applications and orders are discoverable and may be disclosed only in accordance with the applicable provisions of this code and the rules of criminal procedure for the State of West Virginia, and may not be destroyed except upon order of such magistrate or judge, and in any event shall be kept for not less than ten years.

§62-1F-7. Investigative disclosure or use of contents of wire, electronic or oral communications or derivative evidence.

(a) Any law-enforcement officer who has obtained knowledge of the contents of any electronic interception, or evidence derived therefrom, may disclose such contents or evidence to another law-enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(b) Any law-enforcement officer who, by any means authorized by this article, has obtained knowledge of the contents of any electronic interception or any evidence derived therefrom may use such contents or evidence to the extent such use is appropriate to the proper performance of his or her official duties.

(c) Any person who by any means authorized by this article, has obtained knowledge of the contents of any electronic interception or evidence derived therefrom, may disclose such contents or evidence to a law-enforcement officer and may disclose such contents or evidence while giving testimony under oath or affirmation in any criminal proceeding in any court of this state or of another state or of the United States or before any state or Federal grand jury or investigating grand jury.

§62-1F-8. Interception of communications relating to other offenses.

When a law-enforcement officer, while engaged in court authorized electronic interception in the manner authorized herein, intercepts communications relating to offenses other than those specified in the order of authorization, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in section seven. Such contents and evidence may be disclosed in testimony under oath or affirmation in any criminal proceeding in any court of this state or of another state or of the United States or before any state or Federal grand jury when authorized by a judge who finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this article. Such application shall be made as soon as practicable.

§62-1F-9. Retroactive authorization.

Notwithstanding any other provision of this article, when (1) a situation exists with respect to engaging in electronic interception before an order authorizing such interception can with due diligence be obtained; (2) the factual basis for issuance of an order under this article exists; and (3) it is determined that exigent circumstances exist which prevent the submission of an application under section three of this article, conduct or oral communications in the person's home may be electronically intercepted on an emergency basis if an application submitted in accordance with section three of this article is made to a magistrate or judge of the circuit within the county wherein the person's home is located as soon as practicable, but not more than three business days after the aforementioned determination. If granted, the order shall recite the exigent circumstances present and be retroactive to the time of such determination. In the absence of an order approving such electronic interception, the interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earliest.

§62-1G-1. Declaration of necessity.

It is declared, as a matter of legislative determination, that it is necessary to grant subpoena powers in aid of criminal investigations of certain crimes against minors involving electronic communications systems or services or remote computing services.

§62-1G-2. Subpoenas for criminal investigations relating to certain offenses against minors for records concerning an electronic communications system or service or remote computing service; content; fee for providing information; and limiting liability.

(a) As used in this section:

(1)(A) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted, in whole or in part, by a wire, radio, electromagnetic, photoelectronic or photooptical system.

(B) "Electronic communication" does not include:

(i) Any oral communication;

(ii) Any communication made through a tone-only paging device;

(iii) Any communication from a tracking device; or

(iv) Electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

(2) "Electronic communications service" means any service which provides for users the ability to send or receive wire or electronic communications.

(3) "Electronic communications system" means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of the communication.

(4)(A) "Electronic service provider" means a person or entity engaged in the business of providing computer communications through which a consumer may obtain access to the Internet.

(B) "Electronic service provider" does not include a common carrier if it provides only telecommunications service.

(5) "Sexual offense against a minor" means:

(A) A violation or attempted violation of section five,

article eight-d, chapter sixty-one of this code;

(B) A sexual offense or attempted sexual offense committed against a minor in violation of article eight-b, chapter sixty-one of this code;

(C) The distribution and display or attempted distribution and display of obscene materials

to a minor in violation of section two, article eight-a, chapter sixty-one of this code;

(D) The use or attempted use of obscene matter with the intent to seduce a minor in violation of section four, article eight-a, chapter sixty-one of this code;

(E) The employment or use or the attempted employment or use of a minor to produce obscene materials in violation of section five, article eight-a, chapter sixty-one of this code;

(F) The solicitation of a minor by use of a computer in violation of section fourteen-b, article three-c, chapter sixty-one of this code; or

(G) The use of a minor in filming sexually explicit conduct in violation of sections two and three, article eight-c, chapter sixty-one of this code.

(6) "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.

(b) When a law-enforcement agency is investigating a sexual offense against a minor, an offense of stalking under section nine-a, article two, chapter sixty-one of this code when the victim is a minor or an offense of child kidnapping under section fourteen, article two, chapter sixty-one of this code, and has reasonable suspicion that an electronic communications system or service or remote computing service has been used in the commission of a sexual offense against a minor as defined in this section, an offense of stalking when the victim is a minor or an offense of child kidnapping, a magistrate or a circuit court judge may issue a subpoena, upon written application on a form approved by the West Virginia Supreme Court of Appeals, to the electronic communications system or service or remote computing service provider that owns or controls the Internet protocol address, websites, electronic mail address or service to a specific telephone number, requiring the production of the following information, if available, upon providing in the subpoena the Internet protocol address, electronic mail address, telephone number or other identifier, and the dates and times the address, telephone number or other identifier suspected of being used in the commission of the offense:

(1) Names;

(2) Addresses;

(3) Local and long distance telephone connections;

(4) Records of session times and durations;

(5) Length of service, including the start date and types of service utilized;

(6) Telephone or other instrument subscriber numbers or other subscriber identifiers, including any temporarily assigned network address; and

(7) Means and sources of payment for the service, including any credit card or bank account numbers.

(c) A subpoena issued under this section shall state that the electronic communications system or service or remote computing service provider shall produce only those records listed in subdivisions (1) through (7) of subsection (b) of this section, that are reasonably necessary to the investigation of the suspected criminal activity or offense as described in the subpoena: Provided, that the law-enforcement agency may not examine the contents of electronic communications without a warrant.

(d) (1) An electronic communications system or service or remote computing service provider that provides information in response to a subpoena issued under this section may charge a fee, not to exceed the actual cost for providing the information.

(2) The law-enforcement agency conducting the investigation shall pay the fee.

(e) The electronic communications system or service or remote computing service provider served with or responding to the subpoena shall not disclose the existence of the subpoena or its response to the subpoena to the account holder identified in the subpoena.

(f) If the electronic communications system or service or remote computing service provider served with the subpoena does not own or control the Internet protocol address, websites or electronic mail address or provide service for the telephone number that is a subject of the subpoena, the provider shall:

(1) Notify the investigating law-enforcement agency that it is not the provider of the service; and

(2) Provide to the investigating law-enforcement agency any information the provider knows, through reasonable effort, that it has regarding how to locate the electronic service provider that does own or control the Internet protocol address, websites or electronic mail address, or provides service for the telephone number.

(g) There shall be no cause of action against any electronic communication system or service, remote computing service provider, electronic service provider or telecommunications carrier or its officers, employees, agents or other specified persons for providing information, facilities or assistance in accordance with the terms of the subpoena issued under this section.

(h) Applications for subpoenas authorized by this section may be transmitted to the appropriate court by any means permitted by rules promulgated by the West Virginia Supreme Court of Appeals.

(i) The West Virginia Supreme Court of Appeals shall prescribe a form to be used by law-enforcement agencies applying for a subpoena authorized by this section.

§62-2-1. Prosecutions to be by presentment or indictment.

Prosecutions for offenses against the state, unless otherwise provided, shall be by presentment or indictment. The trial of a person on a charge of felony shall always be by indictment; and indictment may be found in the first instance, whether the accused has been examined or committed by a justice or not.

§62-2-2. When name of prosecutor, etc., to be affixed to indictment, etc.; requiring security for costs from prosecutor.

In a prosecution for a misdemeanor, the name of the prosecutor, if there be one, and the county of his residence, shall be written at the foot of the presentment or indictment, when it is made or found; and, for good cause, the court may require a prosecutor to give security for the costs, and, if he fail to do so, dismiss the prosecution at his costs.

§62-2-3. When costs assessed against prosecutor.

If any proceeding for an offense, had or moved at the instance of a prosecutor, be dismissed, or the accused discharged from the accusation, the court or justice before whom the proceeding is may give judgment against the prosecutor in favor of the accused for his costs.

§62-2-4. Indictment for perjury; admissibility of certain records, etc., as evidence.

In an indictment or accusation of perjury or subornation of perjury, it shall be sufficient to state the substance of the offense charged against the accused, and in what court or by whom the oath was administered which is charged to have been falsely taken, and to make an averment that such court or person had competent authority to administer the same, together with the proper averments to falsify the matter wherein the perjury is assigned, without setting forth any part of any record or proceeding at law or equity, or the commission or authority of the court or person before whom the perjury was committed; but nothing herein shall be construed to allow, without the consent of the accused, a part only of the record, proceeding or writing to be given in evidence on the trial of such indictment or accusation.

§62-2-5. Indictment for embezzlement; description and proof of money in prosecutions for embezzlement and other crimes.

In a prosecution against a person accused of embezzling, or fraudulently converting to his own use, bullion, money, bank notes, or other security for money, it shall be lawful, in the same indictment, to charge and thereon to proceed against the accused, for any number of distinct acts of such embezzlement or fraudulent conversion which may have been committed by him within six months from the first of the last of such acts; and it shall be sufficient to allege the embezzlement or fraudulent conversion to be of money, bullion, bank notes, or security for money without specifying the particular kind of money, bank notes, bullion or security for money, as the case may be; and such allegation, so far as it regards the description of the property, shall be sustained, if the accused be proved to have embezzled or fraudulently converted to his own use, any bullion, money, bank notes, or security for money (although the particular item or thing embezzled or converted be neither alleged nor proved).

And in any indictment, warrant or information in which it is necessary to describe money current in this state, a description of such money as "United States currency" will be sufficient without specifying the number and denomination thereof, and such description shall be construed to mean national bank notes, United States treasury notes, federal reserve notes, certificates for either gold or silver coin, fractional coin, currency, or any other form of money issued by the United States government and current as money in this state.

§62-2-6. Indictment for forgery.

In a prosecution for forging, or altering, or attempting to employ as true, any forged instrument or other thing, and in a prosecution for any of the offenses mentioned in article four, chapter sixty-one of this code, it shall not be necessary to set forth any copy or facsimile of such instrument or other thing, but it shall be sufficient to describe the same in such manner as would sustain an indictment for stealing such instrument or other thing, supposing it to be the subject of larceny.

§62-2-7. Proof of possession of or title to property.

In a prosecution for an offense committed upon or relating to or affecting real estate, or for stealing, embezzling, destroying, injuring, or fraudulently receiving or concealing, any personal estate, it shall be sufficient to prove that when the offense was committed, the actual or constructive possession, or a general or special property in the whole or any part of such estate, was in the person or community alleged in the indictment or other accusation to be the owner thereof.

§62-2-8. Allegations of intent to injure, cheat or defraud.

Where an intent to injure, defraud, or cheat is required to constitute an offense, it shall be sufficient, in an indictment or accusation therefor, to allege generally an intent to injure, defraud, or cheat, without naming the person intended to be injured, defrauded, or cheated, and it shall be sufficient, and not deemed a variance, if there appear to be any intent to injure, defraud, or cheat the United States, or any state, or any county, corporation, officer or person.

§62-2-9. Unnecessary allegations may be omitted.

All allegations, unnecessary to be proved, may be omitted in any indictment or other accusation.

§62-2-10. Defects not invalidating indictment.

No indictment or other accusation shall be quashed or deemed invalid for omitting to set forth that it is upon the oaths of the jurors, or upon their oaths and affirmation; or for the insertion of the words "upon their oath," instead of "upon their oaths"; or for not in terms alleging that the offense was committed "within the jurisdiction of the court," when the averments show that the case is one of which the court has jurisdiction; or for the omission or misstatement of the title, occupation, estate or degree of the accused, or of the name or place of his residence; or for omitting the words "with force and arms," or the statement of any particular kind of force and arms; or for omitting to state, or stating imperfectly, the time at which the offense was committed, when time is not of the essence of the offense; or for failing to allege the value of an instrument which caused death, or to allege that it was of no value; or for omitting to charge the offense to be "against the form of the statute," or statutes; or for the omission or insertion of any other words of mere form or surplusage. Nor shall it be abated for any misnomer of the accused; but the court may, in case of misnomer appearing before or in the course of a trial, forthwith cause the indictment or accusation to be amended according to the fact.

§62-2-11. Defects cured by verdict.

Judgment in any criminal case, after a verdict, shall not be arrested or reversed upon any exception to the indictment or other accusation, if the offense be charged therein with sufficient certainty for judgment to be given thereon, according to the very right of the case.

§62-2-12. Discharge of imprisoned person upon failure to indict within certain time; person not indicted by reason of insanity.

A person in jail, on a criminal charge, shall be discharged from imprisonment if he be not indicted before the end of the second term of the court, at which he is held to answer, unless it appear to the court that material witnesses for the state have been enticed or kept away, or are prevented from attendance by sickness or inevitable accident, and except also that, when a person in jail, on a charge of having committed an indictable offense, is not indicted by reason of his insanity at the time of committing the act, the grand jury shall certify that fact to the court; whereupon the court may order him to be sent to a state hospital for the insane, or to be discharged.

§62-2-13. Process, capias and summons in criminal cases.

When an indictment or presentment is found or made, the court shall award process against the accused to answer to the same, if he be not in custody. Such process, if for a felony, may be a capias or a summons, at the discretion of the court; in all misdemeanor cases, it shall be, in the first instance, a summons, but if a summons be returned executed, or be returned not found, and the defendant does not appear, the court may award a capias.

§62-2-14. Direction and execution of process; several writs against same person.

The fifth and eleventh sections of article three, chapter fifty-six of this code shall apply to process in criminal as well as in civil cases. Any summons to answer an indictment for a misdemeanor may be served as a notice is served under the first section of article two, chapter fifty-six of this code. The court may, in the same case against the same person, award at the same time, or different times, several writs of summons or capias, directed to officers of different counties.

§62-2-15. Mailing of process by clerk to officer.

The clerk of every court shall forward by mail all process issued for the state, directed to the officer of any county other than his own, and pay the postage thereon, which, on being duly certified by the court, shall be paid out of the county treasury.

§62-2-16. Execution of process within state.

When process of arrest in a criminal prosecution is issued from a court during its session, either against a party accused or a witness, the officer to whom it is directed or delivered may execute it in any part of the state.

§62-2-17. Delivery of prisoner to court, magistrate or jailer.

(a) An officer who, under a capias from a court, arrests a person accused of an offense other than murder in the first degree shall deliver the accused to such court, if sitting, and if such court is not sitting, the officer shall deliver the accused to a magistrate who may admit the accused to bail: *Provided*, That any such bail granted by a magistrate shall be conditioned upon the appearance by the accused before the court on the date provided in the capias for such appearance, or, if no such date is provided in the capias, then such bail shall be conditioned upon the appearance of the accused on the next day on which such court is sitting.

(b) No magistrate shall admit to bail any person arrested under an alias capias.

(c) Bail set by a magistrate may be made and posted before the magistrate court clerk and the recognizance and record thereof, together with any money received therefor, shall be forthwith delivered to the clerk of the circuit court.

(d) An officer who, under a capias from a court, arrests a person accused of an offense not bailable, or for which bail is not given, shall deliver the accused to such court, if sitting, or to the jailer thereof, who shall receive and imprison him or her.

(e) In all cases where a defendant is arrested and held under a capias for failure to appear in the county wherein the charge or charges is pending, and he or she is entitled to admission to bail, an initial appearance shall be held as soon as practicable, or within five days whichever is sooner, and bail shall be considered pursuant to §62-1C-1a of this code.

(f) Upon the appearance of a defendant upon an indictment or complaint upon which a warrant or capias has been issued, the court shall provide written notice to the sheriff for his or her dissemination to all appropriate law-enforcement agencies that the warrant or capias is no longer active and order that it be immediately removed from all databases.

§62-2-18.

Repealed.

Acts, 1965 Reg. Sess., Ch. 38.

§62-2-19. Prosecutions relating to license taxes, offenses against public policy, etc.

On any indictment or presentment founded on any provision of article twelve, chapter eleven, or article ten, chapter sixty-one of this code, or for any statutory misdemeanor for which no imprisonment may be inflicted, process may be issued immediately, returnable forthwith. If the accused appear and plead to the charge, the trial shall proceed without delay. If, being summoned, he fail to appear and plead, the court may render judgment in the same manner as if he had confessed to the charge in court; and if the offense be punishable by a fine not fixed by law, a jury shall be impaneled to assess the same.

§62-2-20. Exceptions to indictments relating to license taxes and offenses against public policy.

No exceptions shall be allowed for any defect or want of form in any presentment or indictment founded on any provision of article twelve, chapter eleven, or article ten, chapter sixty-one of this code, but the court shall give judgment thereon according to the very right of the case.

§62-2-21. Second capias or trial after summons in misdemeanor cases not covered in §62-2-19.

In prosecutions for misdemeanors, in cases not embraced in section nineteen of this article, if a capias be returned not found, after a summons is returned executed, or if the accused was admitted to bail and make default, the court may either award a new capias, or proceed to trial in the same manner as if the accused had appeared and pleaded not guilty.

§62-2-22. Discontinuance of criminal prosecution for failure to award process or enter continuance.

There shall be no discontinuance of any criminal prosecution by reason of the failure of the court to award process, or to enter a continuance on the record.

§62-2-23. Prosecutions against corporations; effect of failure of corporation to appear.

On any indictment or presentment against a corporation, if a summons be served according to the provisions of sections thirteen or fourteen, article three, chapter fifty-six of this code, and the defendant fail to appear, the court may proceed to trial and judgment without further process, as if the defendant had appeared and pleaded not guilty. And where, in any such case, the publication of a copy of the process is required according to said section, the expense of such publication may be certified by the court to the Auditor, and shall be paid out of the treasury of the state; but the same shall be taxed with other costs, and collected from the defendant, if judgment be for the state, and be paid into the treasury of the state by the officer collecting the same.

§62-2-24. Joinder of certain counts.

A count for receiving stolen goods or for embezzlement may be joined with a count for larceny, in the same indictment; and a count for false swearing may be joined with a count for perjury, in the same indictment.

§62-2-25. Compromise or suppression of indictment or presentment.

If any prosecuting attorney shall compromise or suppress any indictment or presentment without the consent of the court entered of record, he shall be deemed guilty of malfeasance in office, and may be removed therefrom in the mode prescribed by law.

§62-3-1. Time for trial; depositions of witnesses for accused; counsel, copy of indictment, and list of jurors for accused; remuneration of appointed counsel.

When an indictment is found in any county, against a person for a felony or misdemeanor, the accused, if in custody, or if he appear in discharge of his recognizance, or voluntarily, shall, unless good cause be shown for a continuance, be tried at the same term. If any witness for the accused be a nonresident of the state, or absent therefrom in any service or employment, so that service of a subpoena cannot be had upon him in this state, or is aged or infirm so that he cannot attend upon the court at the trial, the accused may present to the court in which the case is pending, or to the judge thereof in vacation, an affidavit showing such facts, and stating therein what he expects to prove by any such witness, his name, residence, or place of service or employment; and if such court or judge be of the opinion that the evidence of any such witness, as stated in such affidavit, is necessary and material to the defense of the accused on his trial, an order may be made by such court or judge for the taking of the deposition of any such witness upon such notice to the prosecuting attorney, of the time and place of taking the same, as the court or judge may prescribe; and in such order the court or judge may authorize the employment of counsel, practicing at or near the place where the deposition is to be taken, to cross-examine the witness on behalf of the state, the reasonable expense whereof shall be paid out of the treasury of the state, upon certificate of the court wherein the case is pending. Every deposition so taken may, on the motion of the defendant, so far as the evidence therein contained is competent and proper, be read to the jury on the trial of the case as evidence therein. A court of record may appoint counsel to assist an accused in criminal cases at any time upon request. A copy of the indictment and of the list of the jurors selected or summoned for his trial, as provided in section three of this article, shall be furnished him upon his request, at any time before the jury is impaneled. In every case where the court appoints counsel for the accused and the accused presents an affidavit showing that he cannot pay therefor, the attorney so appointed shall be paid for his services and expenses in accordance with the provisions of article twenty-one, chapter twenty-nine of this code.

§62-3-1a. Written guilty plea; form; right to counsel; effect of plea; failure of plea to be signed or witnessed.

When a person under indictment for a crime indicates that he desires to plead guilty, he may be called upon to sign in open court a form acknowledging his plea to the indictment or to such count or counts thereof as he shall designate. Before accepting a plea of guilty, the court shall satisfy itself by interrogation of the defendant or his counsel that the defendant has received a copy of the indictment and understands the nature of the charges. If the defendant is without counsel, the court shall advise him of his Constitutional right to the assistance of counsel before pleading to the indictment. If the defendant is an indigent, the court shall offer to appoint counsel for him The plea when signed and witnessed shall become a part of the record of the case. The plea shall be sufficient if it is substantially in the following form:

A. If the defendant is represented by counsel:

STATE OF WEST VIRGINIA

vs. Indictment No.....

.....

(Defendant)

In the presence of ....., my counsel, who has fully explained the charges contained in the indictment against me and having received a copy of the indictment before being called upon to plead, I hereby plead guilty to said indictment and each count thereof.

Date: .....

Witness:

.....

(Defendant)

.....

(Counsel for Defendant)

B. If the defendant has waived counsel:

STATE OF WEST VIRGINIA

vs. Indictment No.....

.....

(Defendant)

I certify that I have been advised of my Constitutional right to the assistance of counsel; that I have no money to employ counsel; that I have been offered counsel at no cost to me; and that I have given up my right to have counsel provided to assist me.

I have received a copy of the indictment before being called upon to plead. It has been read or explained to me and I fully understand the nature of the charges against me, including the penalties that the court may impose.

I hereby plead guilty to said indictment and each count thereof.

Date: .....

Witness:

.....

(Defendant)

.....

(Clerk)

The plea when signed and witnessed shall constitute prima facie evidence that the defendant was fully advised of his rights as herein provided, and that his plea was properly entered. The neglect or failure to cause a plea to be signed or witnessed shall not invalidate the plea or any judgment rendered thereon, provided the record otherwise discloses that the defendant was advised of his rights and that the plea was otherwise properly entered.

§62-3-2. Presence of accused during trial; arraignment; plea.

A person indicted for felony shall be personally present during the trial therefor. If he refuse to plead or answer, and do not confess his guilt, the court shall have the plea of not guilty entered, and the trial shall proceed as if the accused had entered that plea, and judgment upon the verdict in any such trial shall be entered up as in cases of misdemeanor. The formal arraignment of the prisoner, the proclamation by the sheriff, and the charge of the clerk to the jury, as heretofore practiced, shall be dispensed with.

§62-3-3. Selection of jury in felony cases; striking jurors; alternate jurors.

In a case of felony, twenty jurors shall be drawn from those in attendance for the trial of the accused. If a sufficient number of jurors for such panel cannot be procured in this way, the court shall order others to be forthwith summoned and selected, until a panel of twenty jurors, free from exception, be completed, from which panel the accused may strike off six jurors and the prosecuting attorney may strike off two jurors. The prosecuting attorney shall first strike off two jurors, and then the accused six. If the accused failed to strike from such panel the number of jurors this section allows him to strike, the number not stricken off by him shall be stricken off by the prosecuting attorney, so as to reduce the panel to twelve, who shall compose the jury for the trial of the case.

Whenever, in the opinion of the court the trial is likely to be a protracted one, the court may direct that not more than four jurors, in addition to the regular jury, be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impanelled, and two peremptory challenges if three or four alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by this section may not be used against an alternate juror.

§62-3-4. Challenge of jurors.

No challenge of a juror other than that provided for in the preceding section shall be allowed the state or the accused, except for cause, and all challenges shall be tried by the court in which they are made.

§62-3-5.

Repealed.

Acts, 1965 Reg. Sess., Ch. 40.

§62-3-6. Custody of jury; board and lodging of jurors; conversation with jurors.

After a jury in a case of felony is impaneled and sworn, the court, in its discretion, may order the jury to be placed in the custody of the sheriff or other officer or officers designated by the court until the jury agree upon a verdict or are discharged by the court. While a jury is in the custody of the sheriff or other officer or officers as herein provided, they shall be furnished with suitable board and lodgings by the sheriff or other officer. After a jury has been impaneled no sheriff or other officer shall converse with, or permit anyone else to converse with, a juror unless by leave of the court. When the court orders a jury to be placed in the custody of the sheriff or other officer or officers, the court shall, in its discretion, determine the manner in which such jury shall be kept in custody by the sheriff or other officer or officers until the jury agree upon a verdict or are discharged by the court.

§62-3-7. Filling vacancy in jury; discharge of jury.

If a juror, after he is sworn, be unable, from any cause, to perform his duty, the court may, in its discretion, cause another qualified juror to be sworn in his place. And in any criminal case the court may discharge the jury, when it appears that they cannot agree in a verdict, or that there is manifest necessity for such discharge.

§62-3-8. Jury for defendants indicted and tried jointly; jury for separate trials of persons jointly indicted.

Persons indicted and tried jointly, for a felony, shall be allowed to strike from the panel of jurors not more than six thereof, and only such as they all agree upon shall be stricken therefrom; and if they cannot agree upon the names to be so stricken off, the prosecuting attorney shall strike therefrom a sufficient number of names to reduce the panel to twelve. If persons jointly indicted elect to be, or are, tried separately, the panel in the case of each shall be made up as provided in the third section of this article.

§62-3-9.

Repealed.

Acts, 1974 Reg. Sess., Ch. 66.

§62-3-10.

Repealed.

Acts, 1947 Reg. Sess., Ch. 62.

§62-3-11.

Repealed.

Acts, 1947 Reg. Sess., Ch. 62.

§62-3-12.

Repealed.

Acts, 1947 Reg. Sess., Ch. 62.

§62-3-13. Change of venue.

A court may, on the petition of the accused and for good cause shown, order the venue of the trial of a criminal case in such court to be removed to some other county. When the venue is so changed, the court making the order shall recognize the witnesses and the accused (if the offense be bailable and bail be given) to appear on some certain day before the court to which the case is removed; if the offense be not bailable, or the bail required be not given, the court shall remand him to its own jail, and order its officer to remove him thence to the jail of the court to which the case is so removed, so that he shall be there before the day for the appearance of the witnesses. The clerk of the court that orders a change of venue shall certify copies of such recognizance, and of the record of the case, to the clerk of the court to which the case is removed; and such court shall proceed with the case as if the prosecution had been originally therein, and for that purpose the certified copies aforesaid shall be sufficient.

§62-3-14. Conviction of part of offense charged in indictment.

If a person indicted for a felony be by the jury acquitted of part and convicted of part of the offense charged, he shall be sentenced by the court for such part as he is so convicted of, if the same be substantially charged in the indictment, whether it be felony or misdemeanor.

§62-3-15. Verdict and sentence in murder cases.

If a person indicted for murder be found by the jury guilty thereof, they shall in their verdict find whether he or she is guilty of murder of the first degree or second degree. If the person indicted for murder is found by the jury guilty thereof, and if the jury find in their verdict that he or she is guilty of murder of the first degree, or if a person indicted for murder pleads guilty of murder of the first degree, he or she shall be punished by imprisonment in the penitentiary for life, and he or she, notwithstanding the provisions of article twelve, chapter sixty-two of this code, shall not be eligible for parole: Provided, That the jury may, in their discretion, recommend mercy, and if such recommendation is added to their verdict, such person shall be eligible for parole in accordance with the provisions of said article twelve, except that, notwithstanding any other provision of this code to the contrary, such person shall not be eligible for parole until he or she has served fifteen years: Provided, however, That if the accused pleads guilty of murder of the first degree, the court may, in its discretion, provide that such person shall be eligible for parole in accordance with the provisions of said article twelve, and, if the court so provides, such person shall be eligible for parole in accordance with the provisions of said article twelve in the same manner and with like effect as if such person had been found guilty by the verdict of a jury and the jury had recommended mercy, except that, notwithstanding any provision of said article twelve or any other provision of this code to the contrary, such person shall not be eligible for parole until he or she has served fifteen years.

§62-3-16. Verdicts jury may find on indictments for homicide or assault.

On an indictment for felonious homicide, the jury may find the accused not guilty of the felony, but guilty of involuntary manslaughter. And on any indictment for maliciously shooting, stabbing, cutting, or wounding a person, or by any means causing him bodily injury, with intent to kill him the jury may find the accused not guilty of the offense charged, but guilty of maliciously doing such act with intent to maim, disfigure, or disable, or of unlawfully doing it, with intent to maim, disfigure, disable, or kill, such person.

§62-3-17. Verdicts jury may find in prosecution for larceny.

In a prosecution for grand larceny, if it be found that the thing stolen is of less value than $50, the jury may find the accused guilty of petit larceny, except in cases where it is otherwise provided; and in a prosecution for petit larceny, though the thing stolen be of the value of $50 or more, the jury may find the accused guilty; and in either case he shall be sentenced for petit larceny.

§62-3-18. Conviction of attempt on trial for felony; effect of general verdict of not guilty.

On an indictment for felony, the jury may find the accused not guilty of the felony, but guilty of an attempt to commit such felony; and a general verdict of not guilty upon such indictment shall be a bar to a subsequent prosecution for an attempt to commit such felony.

§62-3-19. Faulty counts in indictment.

Where there are several counts in an indictment, and a general verdict of guilty is found, judgment shall be entered against the accused, if any count be good, though others be faulty. But on the trial, the court may, on motion of the accused, instruct the jury to disregard any count that is faulty.

§62-3-20. Verdict and judgment in joint trial.

Where two or more persons are charged and tried jointly, the jury may render a verdict as to any of them as to whom they may agree; whereupon judgment shall be entered according to the verdict; and as to the others the case shall be tried by another jury.

§62-3-21. Discharge for failure to try within certain time.

Every person charged by presentment or indictment with a felony or misdemeanor and, remanded to a court of competent jurisdiction for trial, shall be forever discharged from prosecution for the offense, if there be three regular terms of such court, after the presentment is made or the indictment is found against him without a trial, unless the failure to try him was caused by his insanity; or by the witnesses for the state being enticed or kept away, or prevented from attending by sickness or inevitable accident; or by a continuance granted on the motion of the accused; or by reason of his escaping from jail, or failing to appear according to his recognizance, or of the inability of the jury to agree in their verdict; and every person charged with a misdemeanor before a justice of the peace, city police judge, or any other inferior tribunal, and who has therein been found guilty and has appealed his conviction of guilt and sentence to a court of record, shall be forever discharged from further prosecution for the offense set forth in the warrant against him if after his having appealed such conviction and sentence, there be three regular terms of such court without a trial, unless the failure to try him was for one of the causes hereinabove set forth relating to proceedings on indictment.

§62-4-1. Fines to accrue to state for support of free schools, unless otherwise provided.

Unless otherwise expressly provided, or manifestly inconsistent with the intention of the Legislature, every fine or forfeiture imposed by or under an act of the Legislature shall be and accrue to the state for the support of the free schools, and shall be applied to such purpose pursuant to the fifth section of article XII of the Constitution.

§62-4-2. Allowance to informer or person prosecuting.

Although a law may allow an informer or person prosecuting to have part of a fine, the whole thereof shall go to the state for the support of the free schools, unless the name of such informer or prosecutor be indorsed on or written at the foot of the presentment at the time it is made, or of the indictment before it is presented to the grand jury, or of the writ issued in the action, or the warrant, or the notice of the motion, before the service of such writ, warrant or notice.

§62-4-3. Fine, imprisonment, etc., to be by indictment, etc.; exception.

Where fine and imprisonment, or fine and any punishment is imposed by law, the proceeding shall be by indictment or presentment in the circuit court, or other court of record having jurisdiction in criminal cases, in the county wherein the offense was committed, unless otherwise specially provided.

§62-4-4. Recovery of fines before justice or in court.

Where a fine alone is imposed, if it be in a case mentioned in section one, article eighteen, chapter fifty of this code, it may be recovered upon warrant of a justice having jurisdiction; and whether so mentioned or not, it may be recovered by presentment or indictment in the circuit court, or other court of record having jurisdiction in criminal cases, in the county wherein the offense was committed.

§62-4-5. Form of proceedings.

The proceedings in all cases shall be in the name of the state, unless otherwise specially provided. If before a justice, the proceedings shall be according to article eighteen, chapter fifty of this code.

§62-4-6. Remission of fines by Governor.

Fines may be remitted by the Governor, subject to the provisions of sections sixteen and seventeen, article one, chapter five of this code.

§62-4-7. Remission of fines by courts.

No court shall remit any fine except for contempt, which the court during the same term may remit either wholly or in part. This section shall not impair the judicial power of the court to set aside a verdict or judgment, or to grant a new trial.

§62-4-8. Duties of prosecuting attorney in relation to fines.

It shall be the duty of the prosecuting attorney of every county to institute and prosecute in the circuit court, or other court having jurisdiction thereof, as the case may be, proper proceedings for the recovery of all fines imposed by law, where the cases are cognizable in such court. He shall superintend the issuing of executions on judgments for fines rendered by such courts, and cause all delinquencies in relation to the service or return of such executions to be duly prosecuted. If judgment be rendered by the circuit or other court for a fine, whether with or without imprisonment, a docket fee of $10 for the prosecuting attorney's services, but payable into the county treasury, shall be taxed in the costs against the offender.

§62-4-9. Capias pro fine; release of defendant on bond.

When a judgment for fine and costs is rendered by a circuit court, or other court of record having jurisdiction in criminal cases, the court may order a capias pro fine to be issued thereon at any time during the term at which the judgment is rendered, and if not such order be made, such capias shall be issued by the clerk of the court in vacation if he be ordered to do so by the prosecuting attorney. If the judgment of the court in such case be that the defendant be imprisoned and fined, or that he be fined and imprisoned until the fine and costs be paid, or if the defendant be imprisoned by virtue of such capias pro fine, in either event, the defendant may be released from such imprisonment, where he is detained for a failure to pay such fine and costs, only upon his giving bond with good security before the court, or before the clerk thereof in vacation, or before the sheriff of the county in which such judgment is rendered, payable to the State of West Virginia, for the payment of such fine and costs, at a time not exceeding twelve months after the date of such bond. If default be made in the payment of such bond, the same may be proceeded against to judgment and execution as if it were a forthcoming bond.

§62-4-10. Discharge from confinement; allowances for labor while confined.

Any person imprisoned for the purposes stated in the preceding section may be discharged from confinement at any time by the court wherein he was sentenced, and in no event shall his confinement, for failure to pay a fine and costs, exceed the term of six months. Any person confined in prison who is required to perform labor under the provisions of article fifteen, chapter seventeen of this code, shall be allowed, as a credit upon the fine and costs for which he is liable, the sum of $1.50 a day for each day he has so labored, and when the amount of such credits equals the amount of the fine and costs he shall be discharged from custody.

§62-4-11. Fieri facias for collection of fines.

On every judgment for a fine rendered by a circuit court, or other court of record having jurisdiction in criminal cases, if no special order be made by the court or judge, the clerk of the court shall issue a writ of fieri facias immediately after the term at which such judgment was rendered. And unless paid in court, a payment to any person other than the officer who holds the execution shall not discharge the judgment.

§62-4-12.

Repealed.

Acts, 1995 Reg. Sess., Ch. 83.

§62-4-13.

Repealed.

Acts, 1995 Reg. Sess., Ch. 83.

§62-4-14.

Repealed.

Acts, 1995 Reg. Sess., Ch. 83.

§62-4-15. Limitation upon collection of fines.

No prosecution by warrant for the recovery of a fine shall be commenced, unless it be done within one year after there was cause therefor, except in cases where a different limitation is prescribed by law.

§62-4-16. Community service work may be substituted in lieu of a fine in municipal court and magistrate court; immunity from suit.

(a) Notwithstanding any provision of this code to the contrary, a municipal judge or a magistrate may substitute, in lieu of the imposition of a sentence of incarceration or imposition of a fine, community service work for such incarceration or fine. Where community service work is ordered as a substitute on a sentence of incarceration, an eight-hour work day shall extinguish one day of any sentence of incarceration. The minimum wage established by the prevailing federal minimum wage in effect at the time sentencing is imposed shall be used to compute the amount of community service work necessary to extinguish the fine. In the discretion of the court, the sentence credits may run concurrently or consecutively.

(b) Any community service ordered pursuant to the provisions of this section shall be performed for government entities or charitable or nonprofit entities.

(c) Any person who is sentenced to court-ordered community service under this section by a municipal court shall be supervised by the chief of police, or his or her designee. Any person who is sentenced to court-ordered community service under this section by a magistrate shall be supervised by the sheriff or other person designated by the county commission.

(d) Persons sentenced under the provisions of this section remain under the jurisdiction of the sentencing court. The court may withdraw the community service sentence at any time by order entered with or without notice and order a person previously sentenced to community service to serve the term of incarceration or to pay the fine available to the court upon the person's conviction: *Provided,* That any community service work performed before the community service sentence is withdrawn shall be credited against any term of incarceration or fine imposed.

(e) This section does not create any additional cause of action for individuals who appear in municipal or magistrate court. Any person who participates in court-ordered community service is limited to the remedies contained in §29-12A-1 *et seq*. of this code, subject to any defenses, immunities, and limitations of liability contained therein.

§62-4-17. Suspension of licenses for failure to appear in court; payment plan; failure to pay fines will result in late fee and judgment lien.

(a) Upon request and subject to the following requirements, the circuit clerk shall establish a payment plan for a person owing costs, fines, forfeitures, restitution, or penalties imposed by the court, so long as the person signs and files with the clerk an affidavit stating that he or she is financially unable to pay the costs, fines, forfeitures, restitution, or penalties imposed:

(1) A $25 administrative processing fee shall be paid at the time the payment form is filed or, in the alternative, the fee may be paid in no more than five equal monthly payments;

(2) Unless incarcerated, a person must pay in full the costs, fines, forfeitures, restitution, or penalties or enroll in a payment plan upon the entry of the order assessing the costs, fines, forfeitures, restitution, or penalties; and

(3) If the person is incarcerated, he or she must pay in full the costs, fines, forfeitures, restitution, or penalties or enroll in a payment plan within 90 calendar days after release.

(b) The Supreme Court of Appeals shall develop a uniform payment plan form and financial affidavit for requests for the establishment of payment plan pursuant to subsection (a) of this section. The forms shall be made available for distribution to the offices of circuit clerks and circuit clerks shall use the payment plan form and affidavit form developed by the Supreme Court of Appeals when establishing payment plans.

(c)(1) The payment plan shall specify: (A) The number of payments to be made; (B) the dates on which such payments are due; (C) the amount due for each payment; (D) all acceptable payment methods; and (E) the circumstances under which the person may receive a late fee, have a judgment lien recorded against them, or have the debt sent to collections for nonpayment.

(2) The monthly payment under the payment plan shall be calculated based upon all costs, fines, forfeitures, restitution, or penalties owed within the court, and shall be two percent of the person's annual income divided by 12, or $10, whichever is greater: *Provided*, That if this calculation results in a payment plan lasting more than five years, the monthly payments shall be set by dividing the total amount owed by 60.

(3) The court may review the reasonableness of the payment plan, and may on its own motion or by petition, waive, modify, or convert the outstanding costs, fines, forfeitures, restitution, or penalties to community service if the court determines that the individual has had a change in circumstances and is unable to comply with the terms of the payment plan.

(d)(1) The clerk may assess a $10 late fee each month if a person fails to comply with the terms of a payment plan, and if any payment due is not received within 30 days after the due date, and the person:

(A) Is not incarcerated;

(B) Has not brought the account current;

(C) Has not made alternative payment arrangements with the court; or

(D) Has not entered into a revised payment plan with the clerk before the due date.

(2) If, after 90 days, a payment has not been received, the clerk may do one or both of the following: (A) Record a judgment lien as described in subsection (f) of this section; or (B) consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however*, That the collection fee may not exceed 25 percent of the delinquent payment amount. The clerk may send notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment.

(e)(1) If after 180 days of a judgment a person fails to enroll in a payment plan and fails to pay his or her costs, fines, forfeitures, restitution, or penalties, the clerk may assess a $10 late fee and shall notify the person of the following:

(A) That he or she is 180 days past due in the payment of costs, fines, forfeitures, restitution, or penalties imposed pursuant to a judgment of the court;

(B) That he or she has failed to enroll in a payment plan;

(C) Whether a $10 late fee has been assessed; and

(D) That he or she may be the subject of a judgment lien or have his or her debt sent to a collection agency if the overdue payment of costs, fines, forfeitures, restitution, or penalties is not resolved within 30 days of the date of the notice issued pursuant to this subsection.

(2) If after 30 days from the issuance of a notice pursuant to subdivision (1) of this subsection, a payment has not been received, the clerk may do one or both of the following:

(A) Record a judgment lien as described in subsection (f) of this section; or

(B) Consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however*, That the collection fee may not exceed 25 percent of the delinquent payment amount.

(f) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county of

nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county wherein the defendant resides or owns property. The clerk of the county commission shall record and index these abstracts of judgment without charge or fee to the prosecuting attorney, and when recorded, the amount stated to be owed in the abstract constitutes a lien against all property of the defendant: *Provided*, That when all the costs, fines, fees, forfeitures, restitution, or penalties for which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of judgment, prepared in accordance with the provisions of §38-12-1 of this code, for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerk of the county commission shall record and index the release of judgment without charge or fee to the prosecuting attorney.

(g) Any driver's license suspension entered by the Division of Motor Vehicles prior to July 1, 2016, for the failure to appear or otherwise respond in court or for nonpayment of costs, fines, forfeitures, restitution, or penalties is null and void. A person whose driver's license was suspended on or after July 1, 2016, but prior to July 1, 2020, solely for the nonpayment of costs, fines, forfeitures, restitution, or penalties, if otherwise eligible, shall have his or her license reinstated:

(1) Upon payment in full of all outstanding costs, fines, forfeitures, restitution, or penalties and a $25 reinstatement fee paid to the Division of Motor Vehicles; or

(2) Upon establishing a payment plan pursuant to subsection (a) of this section and the payment of a $25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a payment plan is in effect, and upon receipt of the notification, the division shall waive the reinstatement fee.

(h) If a person charged with a criminal offense fails to appear or otherwise respond in court after having received notice to do so, the court shall notify the Division of Motor Vehicles thereof within 15 days of the scheduled date to appear unless such person sooner appears or otherwise responds in court to the satisfaction of the court. Upon such notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the person appears as required.

§62-5-1. Payment of witnesses.

Sections sixteen and seventeen of article one, and section sixteen of article two, chapter fifty-nine of this code shall apply to a person attending as a witness under a recognizance or summons in a criminal case whether the same be a felony or misdemeanor, as well as to a person attending under a summons in a civil case, except that in a criminal case, a person residing out of this state, who attends a court therein as a witness, shall be allowed by such court a proper compensation for attendance and travel to and from the place of his abode; the amount of the same to be fixed by such court. Such compensation and other allowances shall, in all criminal cases be paid out of the treasury of the state.

§62-5-2. Payment of witness fees and other legal charges by prosecutor.

The sum to which a witness is entitled who attends for the state, and any other legal charges incurred in a case wherein there is a prosecutor, shall be paid by such prosecutor as if he were the plaintiff in the case, unless there be a judgment against the defendant, in which case the same shall be taxed in the costs and paid to the persons entitled thereto, by the sheriff or other officer who may receive the same.

§62-5-3.

Repealed.

Acts, 1975 Reg. Sess., Ch. 126.

§62-5-4. Fees of officer executing process or rendering service out of county in felony cases.

A sheriff or other officer, for traveling out of his county to execute process in a case of felony and, doing any act in the service thereof for which no other compensation is provided, shall receive therefor, out of the treasury, such compensation as the court from which the process issued may certify to be reasonable. When in such case an officer renders any service for which no specific compensation is provided, the court in which the case may be, may allow therefore what it deems reasonable, and such allowance shall be payable out of the treasury.

§62-5-5. Certificate by the court as to fees and expenses.

The certificate required by section fifteen, article one, chapter fifty-nine of this code shall be made by the court in which the prosecution is, or to which the justice certifies, as hereinafter mentioned. Any other expense incident to a proceeding in a criminal case, which is payable out of the treasury, otherwise than under the preceding section, shall be certified by such court unless otherwise provided. With such certificate of allowance, there shall be transmitted to the Auditor the vouchers on which it is made.

The entry of such certificate shall state how much thereof is on account of each person prosecuted.

§62-5-6. Expenses of preliminary hearing before justice certified to clerk.

A justice before whom there is any proceeding in a criminal case, preliminary to prosecution in a circuit court or other court of record having jurisdiction in criminal cases, shall certify to the clerk of such court all the expenses incident to such proceeding which are payable out of the treasury.

§62-5-7. Execution for expenses incident to prosecution.

In every criminal case the clerk of the court in which the accused is convicted shall, as soon as may be, make up a statement of all the expenses incident to the prosecution, including such as are certified to him by a justice under the preceding section; and execution for the amount of such expenses shall be issued and proceeded with, and article four of this chapter shall apply thereto in like manner as if, on the day of completing such statement, there was judgment in such court in favor of the state against the accused for such amount as a fine.

§62-5-8. Failure to present claim in time.

If, by reason of the failure of a person to present his claim in due time, a sum be not included in such execution, which would have been included if so presented, such claim, unless there be good cause shown for the failure, shall be disallowed.

§62-5-9. Fee to prosecuting attorney out of State Treasury; judgment against state for costs.

No fee to any prosecuting attorney shall be payable out of the treasury, unless it be expressly provided. And in no case shall there be a judgment against the state for costs.

§62-5-10. Mandatory cost assessed upon conviction of a felony.

(a) Every circuit court shall assess, in every felony criminal matter as a cost to the defendant, an assessment in the sum of $75 for each felony count of conviction. The assessment referred to herein shall be paid upon adjudication of guilt unless the court determines that the defendant is unable to pay in such a manner in which case payment of the assessment shall be paid prior to final disposition. If the circuit court determines that a defendant is financially unable to pay the assessment prior to final disposition, payment of the assessment shall be a mandatory condition of probation or parole.

(b) The clerk of the circuit court wherein the assessment is imposed under the provisions of subsection (a) of this section shall, on or before the last day of each month, transmit all costs received pursuant to this section to the State Treasurer for deposit as follows: Fifty dollars to the credit of the crime victims compensation fund created by the provisions of section four, article two-a, chapter fourteen of this code and $25 to the credit of the West Virginia community corrections fund created by the provisions of section four, article eleven-c of this chapter.

§62-6-1. Recognizance to keep the peace; condition.

Every recognizance to keep the peace shall be conditioned to the effect that the person of whom it is taken shall keep the peace and be of good behavior for such time, not exceeding one year, as the court or justice requiring it may direct; and if such court or justice directs, it may, when taken of a person charged with an offense, be with condition for so keeping the peace and being of good behavior, in addition to the other conditions of his recognizance imposed in accordance with the provisions of article one-c of this chapter.

§62-6-2.

Repealed.

Acts, 2007 Reg. Sess., Ch. 70.

§62-6-3. Recognizance of insane person or minor.

A recognizance which would be taken of a person but for his being insane or a minor, may be taken of another person, and without further surety, if such other person be deemed sufficient.

§62-6-4. Witnesses in criminal cases; forced attendance.

In a criminal case, a summons for a witness may be issued by the prosecuting attorney. Sections one, four, five, six and eight, article five, chapter fifty-seven of this code shall, in other respects, apply to a criminal as well as a civil case, except that a witness in a criminal case shall be obliged to attend and may be proceeded against for failing to do so, although there may not previously have been any payment, or tender to him of anything for attendance, mileage or tolls.

§62-6-5. Failure of juror to attend inquest out of court.

The name of any person summoned by an officer, in failing to attend as a juror upon an inquest out of court, shall be returned by such officer at the next term of the circuit court of such officer's county. Such court shall fine such person, unless he have a reasonable excuse for his failure, $10.

§62-6-6. Proceedings for fines for contempt or disobedience of process.

No court shall impose a fine upon a juror, witness or other person, for disobedience of its process or any contempt, unless he be present in a court at the time, or shall have been served with a rule of the court, returnable to a time certain, requiring him to show cause why the fine should not be imposed, and shall have failed to appear and show cause.

§62-6-6a. Disposition of prisoners.

[Repealed.]

§62-6-7. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or its application, and to this end, the provisions of this article are declared to be severable.

§62-6-8. Alleged victim of sexual offense may not be required to submit to a polygraph examination or other truth telling device as a condition of investigating an alleged offense nor may prosecutors or law-enforcement officers decline to proceed if the victim refuses such examination.

No law-enforcement officer, prosecutor or any other government official may ask or require the adult, youth or child victim of an alleged sexual offense, as set forth in the provisions of section six, article eight, chapter sixty-one of this code; section six, article twelve of said chapter; section five, article eight-d, of said chapter; and article eight-b of said chapter, or any other sexual offense as defined under state or local law, to submit to a polygraph examination or other truth-testing examination as a condition for proceeding with the investigation of the alleged offense. No law-enforcement officer, prosecutor or any other government official may refuse to proceed with an investigation, warrant, indictment, information or prosecution of the alleged offense because the alleged victim refused to submit to such an examination.

§62-1A-1. Definitions.

"Witness" as used in this article shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.

The word "state" shall include any territory of the United States, and the District of Columbia.

The word "summons" shall include a subpoena, order or other notice requiring the appearance of a witness.

§62-6A-2. Summoning witness in this state to testify in another state.

If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution, or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence (and of any other state through which the witness may be required to pass by ordinary course of travel), will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

If said certificate recommends that the witness be taken into immediate custody and delivered to any officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of 10¢ a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and $5 for each day, that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

§62-6A-3. Summoning witness in another state to testify in this state.

If a person in any state, which by its laws has made provisions for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating the facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If the witness is summoned to attend and testify in this state he shall be tendered the sum of 10¢ a mile for each mile by the ordinary travel route to and from the court where the prosecution is pending, and $5 for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for in the punishment of any witness who disobeys a summons issued from a court of record in this state.

§62-6A-4. Exemption from arrest or service of process.

If a person comes into this state in obedience to a summons directing him to attend and testify in this state he shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

§62-6A-5. Construction of article.

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

§62-6A-6. How article cited.

This article may be cited as "Uniform Act to Secure the Attendance of Witnesses From Without a State in Criminal Proceedings."

§62-6B-1. Legislative findings.

The Legislature hereby finds that there are rare occasions when the interests of justice cannot be served because a child who is alleged to be the victim of certain offenses is unable to testify while in the physical presence of the defendant in the courtroom.

The Legislature further finds that the Constitutional right of the accused to be confronted with the witnesses against him or her must be protected and that this Constitutional guarantee can be protected while, at the same time, allowing a child to testify outside of the physical presence of a defendant in the courtroom.

The Legislature further finds that a child, more so than an adult, may be subject to coercion and pressure by interested adults and the interests of justice would be served by requiring, unless infeasible, memorialization of child victim statements in certain criminal matters.

§62-6B-2. Definitions.

For the purposes of this article, the words or terms defined in this section, and any variation of those words or terms required by the context, have the meanings ascribed to them in this section. These definitions are applicable unless a different meaning clearly appears from the context.

(1) "Child witness" means a person under the age of sixteen years of age who is or will be called to testify in a criminal matter concerning any alleged violation of the provisions of this code.

(2) "Live, closed-circuit television" means a simultaneous transmission, by closed-circuit television or other electronic means, between the courtroom and the testimonial room.

(3) "Operator" means the individual authorized by the court to operate the closed-circuit television equipment used in accordance with the provisions of this article.

(4) "Testimonial room" means a room within the courthouse other than the courtroom from which the testimony of a child witness or the defendant is transmitted to the courtroom by means of live, closed-circuit television.

(5) “Interviewed child” shall mean any person under the age of eighteen who has been interviewed by means of any type of recording equipment in connection with alleged criminal behavior or allegations of abuse or neglect of any child under the age of eighteen.

(6) “Recorded interview” means any electronic recording of the interview, and any transcript thereof, of an interviewed child conducted by: (1) An employee or representative of a child advocacy center as that term is defined in §49-3-101 of this code; (2) any psychologist, psychiatrist, physician, nurse, social worker or other person appointed by the court to interview the interviewed child as provided in §62-6B-3(c) of this code; or (3) a child protective services worker, law-enforcement officer, prosecuting attorney or any representative of his or her office, or any other person investigating allegations of criminal behavior or behavior alleged to constitute abuse or neglect of a child.

§62-6B-3. Findings of fact required for taking testimony of child witness by closed-circuit television; considerations for court.

(a) Upon a written motion filed by the prosecuting attorney, the child's attorney or the child's guardian ad litem, and upon findings of fact determined pursuant to subsection (b) of this section, a circuit court may order that the testimony of a child witness may be taken at a pretrial proceeding or at trial through the use of live, closed-circuit television.

(b) Prior to ordering that the testimony of a child witness may be taken through the use of live, closed-circuit television, the circuit court must find by clear and convincing evidence, after conducting an evidentiary hearing on this issue, that:

(1) The child is an otherwise competent witness;

(2) That, absent the use of live, closed-circuit television the child witness will be unable to testify due solely to being required to be in the physical presence of the defendant while testifying;

(3) The child witness can only testify if live, two-way closed-circuit television is used in the trial; and

(4) That the state's ability to proceed against the defendant without the child witness' live testimony would be substantially impaired or precluded.

(c) The court shall consider the following factors in determining the necessity of allowing a child witness to testify by the use of live, closed-circuit television:

(1) The age and maturity of the child witness;

(2) The facts and circumstances of the alleged offense;

(3) The necessity of the child's live testimony to the prosecution's ability to proceed as well as any prejudice to the defendant by allowing testimony through closed-circuit television;

(4) Whether or not the facts of the case involve alleged physical, sexual, or psychological abuse to the child witness, infliction of bodily injury to the child witness or the threat of bodily injury to the child witness, or another; and

(5) Any mental or physical handicap of the child witness.

(d) In determining whether to allow a child witness to testify through live, closed-circuit television the court shall appoint a psychiatrist or a licensed psychologist with at least five years clinical experience who shall serve as an advisor or friend of the court to provide the court with an expert opinion as to whether, to a reasonable degree of professional certainty, the child witness will suffer severe emotional harm, be unable to testify based solely on being in the physical presence of the defendant while testifying and that the child witness

does not evidence signs of being subjected to undue influence or coercion. The opinion of the psychiatrist or licensed psychologist shall be filed with the circuit court at least thirty days prior to the final hearing on the use of live, closed-circuit television and the defendant shall be allowed to review the opinion and present evidence on the issue by the use of an expert or experts or otherwise.

§62-6B-4. Procedures required for taking testimony of child witness by closed-circuit television; election of defendant; jury instruction; sanction for failure to follow procedures; additional accommodation options; recordings and confidentiality.

(a) If the court determines that the use of live, two-way closed-circuit testimony is necessary and orders its use the defendant may, at any time prior to the child witness being called, elect to absent himself from the courtroom during the child witness' testimony. If the defendant so elects the child shall be required to testify in the courtroom.

(b)(1) If live, closed-circuit television is used in the testimony of the child witness, he or she shall be taken into the testimonial room and be televised live, by closed-circuit equipment to the view of the defendant, counsel, the court and, if applicable, the jury. The projected image of the defendant shall be visible for child witness to view if he or she chooses to do so and the view of the child witness available to those persons in the courtroom shall include a full body view. Only the prosecuting attorney, the attorney for the defendant, and the operator of the equipment may be present in the room with the child witness during testimony. Only the court, the prosecuting attorney and the attorney for the defendant may question the child. In pro se proceedings, the court may modify the provisions of this subdivision relating to the role of the attorney for the defendant to allow the pro se defendant to question the child witness in such a manner as to cause as little psychological trauma as possible under the circumstances. The court shall permit the defendant to observe and hear the testimony of the child witness contemporaneous with the taking of the testimony. The court shall provide electronic means for the defendant and the attorney for the defendant to confer confidentially during the taking of the testimony.

(2) If the defendant elects to not be physically present in the courtroom during the testimony of the child witness, the defendant shall be taken into the testimonial room and be televised live, by two-way closed-circuit equipment to the view of the finder of fact and others present in the courtroom. The defendant shall be taken to the testimonial room prior to the appearance of the child witness in the courtroom. There shall be made and maintained a recording of the images and sounds of all proceedings which were televised pursuant to this article. While the defendant is in the testimonial room, the defendant shall be permitted to view the live, televised image of the child witness and the image of those other persons in the courtroom whom the court determines the defendant is entitled to view. Only the court, the prosecuting attorney and the attorney for the defendant may question the child. In pro se proceedings, the court may modify the provisions of this subdivision relating to the role of the attorney for the defendant to allow the pro se defendant to question the child witness in such a manner as to cause as little emotional distress as possible under the circumstances The transmission from the courtroom to the testimonial room shall be sufficient to permit the defendant to observe and hear the testimony of the child witness contemporaneous with the taking of the testimony. No proceedings other than the taking of the testimony of the child witness shall occur while the defendant is outside the courtroom. In the event that the defendant elects that the attorney for the defendant remain in the courtroom while the

defendant is in the testimonial room, the court shall provide electronic means for the defendant and the attorney for the defendant to confer confidentially during the taking of the testimony.

(c) In every case where the provisions of the article are used, the jury, at a minimum, shall be instructed, unless such instruction is waived by the defendant, that the use of live, closed-circuit television is being used solely for the child's convenience, that the use of the medium cannot as a matter of law and fact be considered as anything other than being for the convenience of the child witness and that to infer anything else would constitute a violation of the oath taken by the jurors.

§62-6B-5. Memorialization of statements of certain child witnesses; admissibility; hearing.

(a) After the effective date of this section, whenever any law-enforcement officer, physician, psychologist, social worker, or investigator, in the course of his or her employment or profession or while engaged in an active criminal investigation as a law-enforcement officer or an agent of a prosecuting attorney, obtains a statement from a child 13 years of age or younger who is an alleged victim in an investigation or prosecution alleging a violation of the provisions of §61-8B-3, §61-8B-4, §61-8B-5, or §61-8B-7 of this code, he or she shall immediately make a contemporaneous written notation and recitation of the statement received or obtained. An audio recording or video recording with sound capability of the statement may be used in lieu of the written recitation required by the provisions of this section. Failure to comply with the provisions of this section creates a presumption that the statement is inadmissible. The statement may be admitted if, after a hearing on the matter, the court finds by clear and convincing evidence that the failure to comply with the provisions of this section was a good faith omission and that the content of the proffered statement is an accurate recital of the information provided by the child and is otherwise admissible.

(b) The provisions of this section shall not apply to:

(1) Medical personnel and other persons performing a forensic medical examination of a child who is an alleged victim; and

(2) Prosecuting attorneys when counseling with a child in preparation for eliciting the child's testimony in court.

§62-6B-6. Confidentiality of recorded interviews of children.

(a) Except as provided by the provisions of this article, recorded interviews of an interviewed child in any judicial or administrative proceeding shall not be published or duplicated except pursuant to the terms of an order of a court of competent jurisdiction. All written documentation in any form that is related to the recorded interview shall also be deemed confidential.

(b) Prior to the commencement of formal proceedings as contemplated in subsection (a) of this section, the persons or agencies listed in subdivision (6),section two of this article shall be entitled to access to or copies of the recorded interview of an interviewed child: Provided, That such persons or agencies may provide access to the recorded interview of a child to a legal parent, guardian or custodian of such child when: (1) Such parent, guardian or custodian is not alleged to have been involved or engaged in conduct that may give rise to a judicial or administrative proceeding; and (2) it would not undermine or frustrate an ongoing investigation: Provided, however, That prior to the commencement of formal proceedings only psychologists, psychiatrists, physicians, nurses and social workers who are providing services to the interviewed child may be afforded reasonable access to the recorded interview.

(c) The Supreme Court of Appeals is requested to promulgate a rule or rules regulating in the courts of this state the publication and duplication of recorded interviews, including use, duplication and publication by counsel, and to include in any such rule limitations upon the publication, duplication, distribution or use of the recorded statements of a child.

(d) Any person who knowingly and willfully duplicates or publishes a recorded interview in violation of the terms of an order entered by a court of competent jurisdiction or in violation of the provisions of subsection (b) of this section shall be guilty of a misdemeanor and, upon conviction, shall be confined in jail for not less than ten days nor more than one year or fined not less than $2,000 nor more than $10,000, or both fined and confined.

§62-7-1. Stay of proceedings.

Upon the application of any person entitled, under the provisions of article four, chapter fifty-eight of this code, to an appeal or writ of error from a judgment in a prosecution for any offense or crime, the criminal court, intermediate court or other court of record of limited jurisdiction, or the judge of such court in vacation, shall make an order postponing the execution of the sentence for a reasonable time within which to prepare and present bills of exceptions to the trial court and until a reasonable time beyond the first day of the next regular term of the circuit court of the county.

Upon the application of any person entitled, under the provisions of article five, chapter fifty-eight of this code, to an appeal or writ of error from the judgment a circuit court convicting him of any offense or crime, the circuit court or the judge thereof in vacation, shall make an order postponing the execution of the sentence for a reasonable time to enable him to prepare and present bills of exceptions and to secure a transcript of the evidence before the court at the trial, and until a reasonable time beyond the first day of the next term of the Supreme Court of Appeals.

§62-7-2. Period of stay when writ of error awarded.

A writ of error, awarded under the provisions of article five, chapter fifty-eight of this code to any judgment of a circuit court referred to in the preceding section, shall operate as a stay of proceedings in the case until the decision of the Supreme Court of Appeals therein. A writ of error awarded under the provisions of article four, chapter fifty-eight of this code, to any judgment of a court of record of limited jurisdiction, by a circuit court or the judge thereof, shall operate as a stay of proceedings in the case until the decision of the circuit court therein.

§62-7-3. Stay of proceedings; removal to penitentiary after reasonable time pending appeal; procedure for bail.

(a) Whenever a stay of proceedings has been granted pursuant to section one or two of this article or any rule of court relating to stays granted under those sections, and the court upon its own motion or after notice and motion by the prosecuting attorney or the defendant shall determine that it is no longer necessary to retain the defendant at a place of confinement near the place of trail in order to permit the defendant to assist in the preparation of his or her appeal to the Supreme Court of Appeals, then unless the defendant shall have posted bail, the sentencing court may vacate the order granting the stay or, in the case of the Supreme Court of Appeals, the Supreme Court of Appeals may vacate its order granting the stay upon the recommendation of the circuit court. Upon the vacation of the order granting the stay, the defendant shall be removed to the penitentiary pursuant to the provisions of section seven of this article: Provided, That the sentencing court of the Supreme Court of Appeals may order incarceration elsewhere for other good cause. In the case of the removal of a defendant from a place of confinement near the place of trial, if at any time during the pendency of the petition for appeal or the appeal the defendant shall post bail or the defendant or the defendant's counsel shall have exhibited the defendant's readiness and ability to post such bail, then the stay shall again be granted or the supersedeas shall be reinstated and the defendant dealt with as hereinafter provided in this section. If a defendant be confined away from the place of trial under the provisions of this subsection, he may nonetheless be returned to a place of confinement near the place of trial at any time his presence is necessary to facilitate preparation for, or access to, proceedings for an appeal.

(b) If a defendant is not released pending disposition of appeal and is removed to the penitentiary or other place of confinement in accordance with the provisions of subsection (a) of this section, then upon the fixing of bail in a proper case, the defendant may be admitted to bail as heretofore provided by law and released from any incarceration in accordance with the terms and conditions of such bail, by the warden of the state penitentiary or other officer having lawful custody, upon the release order of the clerk or judge of the court before whom such bail is to be given. A release order shall be promptly issued by the clerk or judge when the requirements for bail have been complied with or when the defendant or the defendant's counsel has exhibited the defendant's readiness and ability to comply with such requirements. Such release order may be provisional in form indicating that proper arrangements for bail have been made and could be completed upon the personal appearance of the defendant before the clerk or judge. In order to be admitted to bail following the execution by the clerk or judge of the release order or provisional release order the defendant shall be promptly brought before the court or clerk by the officer having custody. If the circumstances under which bail was fixed have changed so that bail is no longer appropriate, bail may be denied: Provided, That nothing in this subsection is intended to alter the conditions under which an individual may be admitted to bail under other provisions of law.

§62-7-4.

Repealed.

Acts, 1965 Reg. Sess., Ch. 40.

§62-7-5.

Repealed.

Acts, 1965 Reg. Sess., Ch. 40.

§62-7-6.

Repealed.

Acts, 1965 Reg. Sess., Ch. 40.

§62-7-7. Removal of convicts to penitentiary -- Generally.

Every person sentenced to confinement in the penitentiary shall remain in the custody of the proper officer of the court pronouncing such sentence until he be delivered to a guard sent and duly authorized by the warden of the penitentiary for the removal of such person to the penitentiary. If such officer fail to make such delivery upon the request of such court, he shall forfeit $100. The warden of the penitentiary shall, so far as consistent with the safe conveyance of prisoners to the penitentiary, cause as many prisoners from the same or several counties to be removed to the penitentiary at the same time, and to that end shall send with the guard authorized to receive such prisoners as many additional guards as are necessary for the purpose, having due regard to economy as well as to the safe conveyance of the prisoners. If in the judgment of the officer of the court pronouncing sentence any facts exist making proper the employment of more guards than usual, he shall bring such facts to the attention of the warden of the penitentiary. The necessary expenses of every such prisoner or convict during his removal to the penitentiary, as well as the necessary expenses of the guard sent for that purpose, shall be paid by the Auditor out of the funds appropriated for criminal charges.

§62-7-8. Same -- Prevention of rescue or escape; additional guards.

If on the way to the penitentiary or other place, in consequence of an attempt made, or reasonably apprehended, to rescue the prisoner, or in consequence of any other unforeseen danger, the guard to whom such prisoner was delivered is satisfied that more guards than accompanying him are necessary, he may summon such additional guards as are necessary, whose expenses shall be paid as provided for in section seven of this article.

§62-7-9. Same -- Immunity of guards from arrest.

All guards while proceeding to the place where a prisoner is confined for the purpose of removing him to the penitentiary or other place, and while engaged in such removal, shall be privileged from arrest except for felony and, breach of the peace, such privilege to cover one day for each two hundred miles traveled by railroad and one day for each fifty miles traveled by other conveyances.

§62-7-10. Prison Commitment order.

The clerk of a circuit court in which a person is sentenced to serve a period of incarceration in a state prison shall transmit to the Commissioner of the Division of Corrections and Rehabilitation a certified commitment order in the form provided for in this section. A person may not be committed to a prison unless the commitment order is signed by the circuit judge with jurisdiction over the matter. The amendments to this section enacted during the 2019 regular session of the Legislature are effective July 1, 2019.

IN THE CIRCUIT COURT OF _____COUNTY, WEST VIRGINIA

State of West Virginia

v. circuit court Case No._____

Defendant: _____

DOB: _____ SSN: XXX-XX-_____ Gender: _____Male/_____Female

WEST VIRGINIA DIVISION OF CORRECTIONS AND REHABILITATION CERTIFIED PRISON COMMITMENT ORDER

On the _____day of _____, 20__, the State of West Virginia, by _____, and the defendant appeared in person and with counsel,_____.

The defendant has been convicted of the following offense(s):

_____

The defendant is committed to the custody of the Commissioner of Corrections and Rehabilitation for a period of:

_____.

Conviction Date: _____ Sentence Date: _____

Effective Sentence Date: _____ Resentence Date: _____ Consecutive to: ____ Concurrent with:

_____

Credit for Jail/Prison Time Served: _____days Credit for Home Incarceration: _____days

Credit for Home Incarceration Parole: _____days Other NonPenal Credit: _____days

Additionally, the court finds:

_____

The defendant shall be transported to and held in a facility under the control of the Commissioner of the Division of Corrections and Rehabilitation. The court further orders that the cost of incarceration in the jail pending transfer shall be paid by the Commissioner consistent with the provisions of §15A-3-16 of this code.

Special Instructions: _____

It is further ordered that the Circuit Clerk shall immediately transmit a certified copy of this commitment order to the Central Office Inmate Records Manager of the Division of Corrections and Rehabilitation by facsimile at (fax number), by email at (email address) or other electronic transmission, or by mail at (street address).

Enter this _____day of _____, 2____.

_____

Circuit Judge

§62-7-10a. Jail Commitment order.

The clerk of a circuit court or magistrate court in which a person is sentenced to serve a period of incarceration in a jail facility under the control of the Commissioner of Corrections and Rehabilitation shall transmit to the Commissioner of the Division of Corrections and Rehabilitation a certified commitment order in the form provided for in this section. A person may not be committed to a jail unless the commitment order is signed by the circuit court judge or magistrate with jurisdiction over the matter. The amendments to this section enacted during the 2019 regular session of the Legislature are effective on July 1, 2019.

IN THE CIRCUIT/MAGISTRATE COURT OF _____COUNTY, WEST VIRGINIA

State of West Virginia

v. circuit/magistrate court Case No._____

Defendant: _____

DOB: _____ SSN: XXX-XX-_____ Gender: _____Male/_____Female

WEST VIRGINIA DIVISION OF CORRECTIONS AND REHABILITATION CERTIFIED JAIL COMMITMENT ORDER

On the _____day of _____, 20__, the State of West Virginia, by _____, and the defendant appeared in person and with counsel,_____.

The defendant has been convicted of the following offense(s):

_____

The defendant is committed to the custody of the Commissioner of Corrections and Rehabilitation for a period of:

_____.

Conviction Date: _____ Sentence Date: _____

Effective Sentence Date: _____ Resentence Date: _____ Consecutive to: ____ Concurrent with:

_____

Credit for Time Served: _____days Credit for Home Incarceration: _____days

Credit for Home Incarceration Parole: _____days Other NonPenal Credit: _____days

Additionally, the court finds:

_____

The defendant shall be transported to and held in a jail facility for the prescribed period of confinement in accordance with law. The court further orders that the cost of incarceration of misdemeanants sentenced to confinement in a jail shall be paid in accordance with the provisions of §15A-3-16 of this code.

Special Instructions: _____

It is further ordered that the Circuit Clerk or Magistrate Court Clerk shall immediately transmit a certified copy of this commitment order to the Central Office Inmate Records Manager of the Division of Corrections and Rehabilitation by facsimile at (fax number), by email at (email address) or other electronic transmission, or by mail at (street address).

Enter this _____day of _____, 2____.

_____

Circuit Judge/Magistrate

§62-8-1. Offenses by inmates; conspiracy.

(a) A person imprisoned or otherwise in the custody of the Commissioner of Corrections and Rehabilitation is guilty of a felony if he or she kills, wounds, or inflicts other bodily injury upon any person at any correctional facility; or breaks, cuts, or injures, or sets fire to any building, fixture, or fastening of any correctional facility, or jail or any part thereof, for the purpose of escaping or aiding any other inmate to escape therefrom, or renders any correctional facility or jail less secure as a place of confinement; or makes, procures, secretes, or has in his or her possession, any instrument, tool, or other thing for such purpose, or with intent to kill, wound, or inflict bodily injury; or resists the lawful authority of an officer or guard of any correctional facility or jail for such purpose or with such intent. Any three or more inmates confined, or in custody, who conspire together to commit any offense mentioned in this section are each guilty of a felony.

(b) Any person in the custody of the Commissioner of Corrections and Rehabilitation who commits an act of bodily intrusion is guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one year nor more than five years. As used in this subsection "bodily intrusion" means penetration, however slight, of the anus of a male or female or the sex organ of a female without his or her consent by means of forcible compulsion and for reasons other than the sexual gratification of either person.

§62-8-2. Punishment of convicts; no discharge from correctional institution while prosecution is pending.

(a) Any inmate who violates the provisions of section one of this article and the violation results in the death of any person is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for life, and he or she shall not be eligible for parole, notwithstanding the provisions of article twelve, chapter sixty-two of this code.

(b) Any inmate who violates the provisions of section one of this article and is serving a term of confinement for life, is guilty of a felony and, upon conviction thereof, he or she may not be eligible for parole, notwithstanding the provisions of article twelve, chapter sixty-two of this code.

(c) Any inmate who is not serving a term of confinement for life and who violates the provisions of section one of this article and whose violation did not result in the death of any person is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility not less than one nor more than five years. Any term of confinement imposed pursuant to this subsection is to be consecutive to any term of confinement already imposed.

(d) An inmate prosecuted for an offense under this article may not be discharged from a state correctional facility while the prosecution is pending.

(e) Any person convicted pursuant to the provisions of this section may not be sentenced under sections eighteen or nineteen, article eleven, chapter sixty-one of this code: Provided, That if an inmate commits an offense punishable by confinement in a state correctional facility, other than the offenses defined in section one of this article, he or she shall be punished as if he or she had been discharged before committing the offense.

§62-8-3. Venue of trials of convicts.

All criminal proceedings against convicts in the custody of the commissioner of corrections shall be in the circuit court in the county where the crime is committed.

§62-8-4. Procedure in sentencing inmates to further confinement for second and third offenses.

When a inmate convicted of an offense and sentenced to confinement therefor in a state correctional facility, is received therein, if he or she was before convicted in the United States of a crime punishable by imprisonment in a state correctional facility, and the record of his or her conviction does not show that he or she has been sentenced under section eighteen or nineteen, article eleven, chapter sixty-one of this code, the warden of a state correctional facility may give information thereof, to the circuit court of the county in which the facility is located, whether it be alleged or not in the indictment on which he or she was convicted that he or she had before been previously so convicted. If such information is given, the court shall cause the inmate to be brought before it, and upon an information filed, setting forth the several records of conviction, and alleging the identity of the inmate with the person named in each, shall require the inmate named to say whether he or she is the same person or not. If he or she say he or she is not, or remain silent, his or her plea, or the fact of his or her silence, shall be entered of record, and a jury shall be impaneled to inquire whether the inmate is the same person mentioned in the several records. If the jury find that he or she is not the same person, he or she shall be remanded to a state correctional facility; but if they find that he or she is the same person, or if he or she acknowledge in open court, after being duly cautioned, that he or she is the same person, the court shall sentence him or her to such further confinement as is prescribed by article eleven, chapter sixty-one of this code, on a second or third conviction, as the case may be.

§62-8-5. Prosecutions for offenses under this article.

Upon complaint in writing, under oath, presented to the circuit court of Marshall county, or to the judge thereof in vacation, that any convict in the penitentiary has committed an offense punishable under sections one and two of this article, proceedings may be had for such offense, either at a regular term of the court, or at a special term, to be appointed by its order, or by the warrant of the judge directed to the clerk of the court, who shall give notice of such special term to the prosecuting attorney and other officers of the court. The clerk shall issue all necessary process; and a grand jury and a venire shall be summoned to attend at the time appointed in such warrant, or at such time as the court may direct. The judge of the said court, when an indictment is found against the accused, shall issue a warrant to the warden of the penitentiary to bring him before the court, as well as any other persons confined in the penitentiary who are required as witnesses on either side.

§62-8-6. Convicts competent as witnesses; proceedings, etc., as in other cases.

In any such prosecution of convicts, all other convicts in the penitentiary shall be competent witnesses for or against the accused. In all other respects, the proceedings, trial, judgment and sentence shall be had, pronounced and executed, as in other cases for prosecutions for offenses punishable with death or confinement in the penitentiary.

§62-8-7. Court costs incurred in prosecution of convicts.

All taxable court costs incurred in the prosecution of a convict for any crime committed by such person while confined in the West Virginia Penitentiary, West Virginia Medium Security Prison, or the West Virginia State Prison for Women or in any other penal institution of the State of West Virginia, or in the custody of an officer thereof, or for the crime of escaping from any of such institutions, or such custody, or for any crime committed while at large after escaping from any such institution, or such custody, shall be paid out of the annual state appropriation for "criminal charges," after such are certified by the circuit court of the appropriate county and approved by the state commissioner of public institutions.

§62-8-8. Orders and warrants for arrest of inmates; authorization to obtain arrest warrants.

(a) Notwithstanding any provision of this code to the contrary, the Commissioner of the Division of Corrections, or his or her designee, may issue an order of arrest for inmates who have been released from the custody of the division due to a clerical error, mistake or due to the failure of a sentencing court to timely transmit an order of commitment prior to the release of an inmate from the commissioner's custody or to the commissioner's custody. All law-enforcement officers shall honor and enforce orders of arrest in the same manner afforded warrants of arrest issued by magistrate or circuit courts notwithstanding any provision of this code to the contrary.

(b) The Commissioner of the Division of Corrections, or his or her designee, may file criminal complaints and obtain from a court of competent jurisdiction an arrest warrant for any inmate under commitment to the commissioner for service of a sentence of incarceration who has escaped from a facility or otherwise absconded from a furlough or temporary release.

(c) The Commissioner of the Division of Corrections, or his or her designee, may enter such orders of arrest or warrants referred to in this section into all criminal reporting databases and other computerized systems utilized by law enforcement for the reporting and apprehension of criminals and fugitives.

§62-9-1. General form of indictments.

All indictments in this state, if procured, found and returned in all other respects as provided by law, shall be sufficient if in the following form:

State of West Virginia, County of ....., to wit:

The grand jurors of the State of West Virginia, in and for the body of the county of ....., upon their oaths present that A....., on the ..... day of ....., 19 ....., in the said county of ....., did unlawfully (or unlawfully and feloniously, as the case may be) (here describe the offense in the language, purport or tenor of the statute as near as may be), against the peace and dignity of the state.

Found upon the testimony of ....., duly sworn in open court to testify the truth and sent before the grand jury this the ..... day of ....., 19 .....

(Signed)

prosecuting attorney.

Said indictment shall have legibly indorsed on the reverse side thereof the words "State of West Virginia versus .....Indictment for a ..... (Felony or Misdemeanor, as the case may be).

Foreman of the Grand Jury

Attest:, prosecuting attorney of

....., county, West Virginia."

Of such indictment a true and complete record shall be made and kept by the clerk of the court in which the indictment is found and returned, and it shall be necessary to state thereon whether such indictment be for a felony or a misdemeanor.

§62-9-2. Indictment for treason.

An indictment for treason shall be sufficient if it be in form, tenor or effect as follows (after following the form in section one:

That A....., being a person owing allegiance to the State of West Virginia, on the ..... day of ....., nineteen ....., in the said county of ..... did then and there, in violation of his said duty of allegiance, maliciously and traitorously counsel and abet, and combine, confederate and agree together with B..... and C..... (and any other persons) (or all such persons, if known, may be made joint defendants and jointly indicted), and divers other persons to the number of ..... (or to a number unknown), whose names are to the jurors unknown, all of whom, both said known and unknown persons, were then and there owing allegiance to the State of West Virginia, did then and there maliciously and traitorously (here state the acts or treason, such as gathering together men for war, collecting munitions, counseling the same, giving aid and comfort to the enemy of the state, etc.), and the said A..... (or together with B..... and C....., etc., as the case may be) did then and there maliciously and traitorously, and contrary to his said duty of allegiance to the State of West Virginia, (here set out the act done, such as command or lead the army, etc., according to the facts of the case), against the peace and dignity of the state.

§62-9-3. Indictment for murder.

An indictment for murder shall be sufficient if it be in form, tenor or effect as follows (after following the form in section one:

That A ....., on the ..... day of ....., nineteen ....., in the said county ....., feloniously, wilfully, maliciously, deliberately and unlawfully did slay, kill and murder one B....., against the peace and dignity of the state.

Upon the trial of such indictment the accused may be convicted of either murder of the first degree, murder of the second degree, voluntary manslaughter, or involuntary manslaughter, as the evidence may warrant.

§62-9-4. Indictment for voluntary manslaughter.

A grand jury may, in a case of homicide, which in their opinion amounts to manslaughter only, and not to murder, find an indictment against the accused for manslaughter, and in such case the indictment shall be sufficient, if it be in form, tenor or effect as follows (after following the form in section one:

That A....., on the ..... day of ....., nineteen ..... in the said county of ..... feloniously and unlawfully did kill and slay one B....., against the peace and dignity of the state.

Upon the trial of such indictment the accused may be convicted of either voluntary or involuntary manslaughter, as the evidence may warrant.

§62-9-5. Indictment for abortion.

An indictment for abortion shall be sufficient if it be in form, tenor or effect as follows (after following the form in section one):

That A....., on the ..... day of ....., nineteen ....., in the said county of ....., did feloniously, wilfully and unlawfully administer to and cause to be taken by one B....., a female person, who was then and there pregnant with child, a certain drug (or thing) commonly called (name the drug or thing) ..... (or the name and character of which is to the grand jurors aforesaid unknown) (or did feloniously, wilfully and unlawfully employ and use upon the body and womb of one B....., a female person, who was then and there pregnant with child, a certain instrument called .....) (or the name and character of which instrument is to the grand jurors aforesaid unknown) (or did feloniously, wilfully and unlawfully employ and use upon the body of one B....., a female person, who was then and there pregnant with child, certain means (describe the means used) (or the character and description of which are to the grand jurors aforesaid unknown), with intent then and there to destroy such unborn child of the said B....., and to produce the abortion and miscarriage of the said B.....; and that the said A....., then and there and by the means aforesaid did feloniously, wilfully and unlawfully destroy such unborn child and produce such abortion and miscarriage of the said B....., the same not being then and there done by the said A....., in good faith with the intention of saving the life of said B..... or that of her said unborn child, against the peace and dignity of the state.

§62-9-6. Indictment for robbery.

An indictment for robbery shall be sufficient if it be in form, tenor or effect as follows (after following the form in section one:

That A ....., on the ..... day of ....., nineteen ....., in the said county of ....., being armed with a dangerous and deadly weapon (if not armed, leave out allegation of being armed), in and upon one B..... an assault did feloniously make, and him the said B.....did then and there feloniously put in bodily fear, and (here set out the articles of money stolen, as the case may be), all the property of the said B....., and lawfully in his control and custody, from the person of the said B....., and against his will, then and there feloniously and violently did steal, take and carry away, against the peace and dignity of the state.

§62-9-7.

Repealed.

Acts, 1976 Reg. Sess., Ch. 43.

§62-9-8. Indictment for arson.

An indictment for arson shall be sufficient if it be in form, tenor or effect as follows (after following the form in section one):

That A....., on the ..... day of ....., nineteen ....., in the said county of ....., in the nighttime (or daytime), did feloniously, maliciously and unlawfully set fire to and burn (or, by the use of dynamite, nitroglycerine, or other explosive or inflammable chemical or substance, did destroy in whole or in part), the dwelling house of another, to wit, the dwelling house of ....., (or any jail or prison, or any hotel, asylum, hospital, or other building in which persons usually dwell or lodge, or any railroad car, boat, or other car or vessel, or any tent or temporary dwelling, in which persons usually travel, dwell or lodge), or did feloniously, maliciously and unlawfully set fire to anything (naming the thing fired), by the burning whereof such dwelling house (jail, prison, hotel, asylum, etc.) was burned, in the nighttime, against the peace and dignity of the state.

§62-9-9. Indictment for burglary.

An indictment for burglary shall be sufficient if it be in form, tenor or effect as follows (after following the form in section one):

That A....., on the ..... day of ....., nineteen ....., about the hour of ....., in the night of the same day, in the said county of ....., the dwelling house of one B....., there situate, feloniously and burglariously did break and enter, with intent the goods and chattels of ....., in the said dwelling house then and there being, then and there feloniously and burglariously to steal, take and carry away; and then and there in the said dwelling house, ... (here name the property, money or goods), of the value of ..... (describing each article stolen and the value thereof and the total value), of the goods and chattels (or money) of the said B....., (or whoever the goods or money belonged to), in the said dwelling house then and there found, then and there feloniously and burglariously, did steal, take and carry away, against the peace and dignity of the state.

And instead of describing burglary with intent to commit larceny, the indictment may charge any other felony thus: Burglary with intent to commit sexual assault or sexual abuse as, after the form herein is followed to the charge of the offense, "with intent in the said dwelling house feloniously and burglariously to sexually assault, (or sexually abuse) "one C....., forcibly and against his will," and "then and there in the said dwelling house did feloniously and burglariously sexually assault (or sexually abuse)" the said C....., forcibly and against his will, against the peace and dignity of the state." And burglary with intent to commit any felony may be charged in the same count.

An indictment for entering a dwelling house or an outhouse adjoining thereto, of another, in the nighttime without breaking, or in the daytime by breaking and entering, may be in the following form, tenor or effect (after following the form in section one):

That A ....., on the ..... day of ....., nineteen ....., in the said county of ....., in the nighttime of said day, the dwelling house (or outhouse, etc., describing the same) of one

B ..... then and there found, did feloniously and burglariously enter without breaking (or, if it be in the daytime, use the words "in the daytime of said day," etc., "did feloniously and burglariously break and enter," etc.), with intent the goods and chattels of B ..... therein found, feloniously and burglariously to take, steal and carry away; and then and there in the said dwelling house (or outhouse, etc.), one ..... and one ..... and ..... dollars in money, etc., of the value of ..... dollars, goods, chattels and money of the said B ..... then and there found, did feloniously and burglariously take, steal and carry away, against the peace and dignity of the state.

And for entering without breaking, in the daytime, the same form shall be sufficient, without alleging therein that the act was done "burglariously."

§62-9-10. Indictment for larceny.

An indictment for larceny shall be sufficient if it be in form, tenor or effect as follows (after following the form in section one):

That A ....., on the ..... day of ....., nineteen ....., in the said county of ....., one (here describe the property or articles stolen, giving value of separate items) of the value of ..... dollars, of the money, goods, effects and property of B....., feloniously did steal, take and carry away, against the peace and dignity of the state.

And if the offense be petit larceny, the word "unlawfully" shall be substituted for the word "feloniously" in the form aforesaid, and after the word "aforesaid" the words "and within one year before the finding of this indictment" shall be inserted.

§62-9-11. Indictment for embezzlement.

An indictment for embezzlement shall be sufficient if it be in form, tenor or effect as follows (after following the form in section one):

That A....., on the ..... day of ....., nineteen ....., in the said county of ....., did feloniously embezzle, fraudulently convert to his own use and steal certain bullion, money, bank notes, drafts, securities for money and other effects and property of and belonging to B ....., to wit: (here describe the property if it can be done, if not state "the description, name, denomination or title of said bank notes, etc., drafts, securities for money or other effects and property of the said B ..... are to the grand jurors unknown"), of the value of ..... dollars, he the said A ....., having then and there in his possession such bullion, money, bank notes, drafts, securities for money and other effects and property by virtue of a certain office, place and employment, to wit: (here describe the office, place or employment), against the peace and dignity of the state.

And it shall not be necessary to describe in the said indictment, or to identify on the trial, the particular money, bullion, note, draft, bill or security for money, which is so taken and embezzled.

§62-9-12. Indictment for false pretenses.

An indictment for false pretenses shall be sufficient if it be in form, tenor or effect as follows (after following the form in section one):

That A ....., on the ..... day of ....., nineteen ....., in the said county of ....., did unlawfully, fraudulently, designedly and feloniously falsely pretend to one B ..... that (here set out the fraudulent misrepresentations), by means of which fraudulent and false pretenses the said A ..... did then and there feloniously and unlawfully obtain (here state the money or property obtained) of the property, goods and chattels of B ....., against the peace and dignity of the state.

And where goods which may be the subject of larceny are obtained on credit by false pretenses by the representation by the accused that there is money due or to become due him and he shall assign the claim for such money in writing to the person from whom such money, goods or other property is obtained, and shall afterwards collect the same without the consent of the assignee, with intent to defraud the indictment shall be sufficient if it be in form, tenor or effect as follows (after following the form in section one):

That A ....., on the ..... day of ....., nineteen ....., in the said county of ....., did unlawfully, fraudulently, designedly and feloniously falsely pretend and represent to one B ..... that there was a certain sum of money due to him the said A ....., from one C ....., and then and there assign in writing to the said B ..... the said sum of money so claimed to be due him from the said C ....., whereupon and by means of which, the said A ..... did then and there obtain, falsely, fraudulently and feloniously, from the said B ..... (here state and describe the money, goods and property of the said B ....., so obtained, and the value thereof), of the money, goods and property of the said B ....., and the said A ..... afterwards, to wit, on or about the ..... day of ....., nineteen ....., did fraudulently stop, and feloniously collect from said C ..... the money so assigned to the said B ....., without the consent of the said B ..... first obtained, against the peace and dignity of the state.

§62-9-13. Indictment for taking, injuring or destroying property.

An indictment for taking and carrying away, injuring, destroying or defacing real and personal property, shall be sufficient if it be in form, tenor or effect as follows (after following the form in section one):

That A ....., on the ..... day of ....., nineteen ....., in the said county of ....., and within one year before the finding of this indictment, did unlawfully, but not feloniously,* take and carry away, destroy, injure and deface the following personal property, not his own, to-wit: (here describe the property; or if it be real property, after the star, state "destroy, injure and deface the following real property, not his own, to wit:" here describe it), against the peace and dignity of the state.

§62-9-14. Indictment for false statement of financial condition.

An indictment for obtaining credit, loan, etc., by false statement in writing, shall be sufficient if it be in form, tenor or effect as follows (after following the form in section one):

That A ....., on the ..... day of ....., nineteen ....., in the said county of ....., and within one year before the finding of this indictment, with intent to cheat and defraud B ....., then and there knowingly, unlawfully, designedly and falsely did make a certain statement in writing (or cause the same writing be relied upon, which said statement in writing was as follows to be made, as the case may be), with intent that the said statement in (here copy, or set forth the full intent and meaning of said statement in writing), (or state that he made said writing on behalf of any person, firm, or corporation in whom or in which he was interested), and which said statement was with respect to the financial condition, means and ability of himself (or of the person, firm or corporation in whom or which he was interested or for whom he was acting), by which false, unlawful and designed statement in writing, he the said A ....., did obtain from the said B ..... a certain (here state what the credit obtained was, such as the extension of credit, or the making of a loan, discount of account receivable, indorsement of the note, etc., as the case may be), which said statement in writing the said A ..... then and there knew to be false and untrue, and which said false statement was relied on by the said B ....., by reason of which the said A .....did obtain from the said B ..... the (here describe the credit or other thing obtained), unlawfully, against the peace and dignity of the state.

§62-9-15. Indictment for giving worthless check.

An indictment for giving a worthless check shall be sufficient if it be in form, tenor or effect as follows (after following the form in section one):

That A ....., on the ..... day of .....,nineteen ....., in the said county of ....., did unlawfully and feloniously (if for a felony, or "did unlawfully," if for a misdemeanor) issue and deliver unto B ....., for value, with intent to defraud the said B ....., his certain check (or draft) of the words and figures following: (here copy check or draft), when he the said A ....., knowingly did not have sufficient funds on deposit in or credit with the said ..... bank of ..... with which to pay said check (or draft), against the peace and dignity of the state.

§62-9-16. Indictment for the forgery of writings.

An indictment for the forgery of any writing shall be sufficient if it be in form, tenor or effect as follows (after following the form in section one):

That A ....., on the ..... day of .....,nineteen ....., in the said county of ....., did falsely and feloniously forge a writing on paper (here describe it, such as "a promissory note of the words and figures following;" copying the note, or fully describe the paper and the signature forged, or indorsed, as the case may be), to the prejudice of another's right, and with intent to defraud, and the said A ..... then and thereafterward, with the intent to defraud one B ....., feloniously did utter and attempt to employ the same as true, to the prejudice of another's right and knowing the same to be forged, against the peace and dignity of the state.

§62-9-17. Indictment for perjury.

An indictment for perjury shall be sufficient if it be in form, tenor or effect as follows (after following the form in section one):

That on the ..... day of ....., nineteen ....., in the said county of ....., before the ..... court of said county of ....., on an issue within the jurisdiction of the said court duly joined, and trial thereof before a jury of the county, between the State of West Virginia, plaintiff, and D ....., the defendant, for a felony, A ..... was in due form of law sworn by said court (or clerk or whoever administered the oath to the witness), having competent authority to administer to him the oath to speak the truth, the whole truth and nothing but the truth, touching the matters then and there in controversy between the State of West Virginia and the said D ..... Whereupon, and upon said trial for a felony, it became then and there a material question to said issue upon said trial, whether (here say what the material question was in detail), and to this material matter the said A .....then and there willfully, falsely, corruptly and feloniously did testify and say, in substance and effect, that (here set out the testimony of A ..... on said material issue as nearly exact as the same can be done); whereas, the said A ....., in truth and in fact, well knew that the said statement and testimony (here state clearly the proper denial of the truth, stating the allegation to suit the particular case), against the peace and dignity of the state.

§62-9-18. Indictment for disturbing religious worship.

An indictment for disturbing religious worship shall be sufficient if it be in form, tenor or effect as follows (after following the form in section one):

That A ....., on the ..... day of .....,nineteen ....., in the said county of ....., and within one year before the finding of this indictment, did willfully interrupt, molest and disturb an assembly of people then and there met for the worship of God, against the peace and dignity of the state.

§62-9-19. Indictment for bigamy.

An indictment for bigamy shall be sufficient if it be in form, tenor or effect as follows (after following the form in section one):

That A ....., on the ..... day of ....., nineteen ....., in ..... county in the state of ....., did intermarry with, in due form of law, one B ....., and have her for his wife (or him for her husband), and afterward, while he (or she) was so lawfully married to the said B ....., the said A ..... did feloniously and unlawfully marry and take to wife (or husband) one C ....., on the ..... day of ....., nineteen ....., in the county of ..... in the State of West Virginia, the said B ..... being still alive, against the peace and dignity of the state.

And if the bigamous marriage took place out of the state and parties thereafter cohabit in this state, the indictment should so allege that fact.

§62-9-20. Indictment for adultery.

An indictment for adultery and fornication shall be sufficient if it be in form, tenor or effect as follows (after following the form in section one):

That A ....., on the ..... day of ....., nineteen ....., in the said county of ....., and within one year before the finding of this indictment, did commit adultery and fornication with one B ....., against the peace and dignity of the state.

§62-9-21. Indictment for keeping house of ill fame.

An indictment for keeping a house of ill fame, assignation house or house of like character, shall be sufficient if it be in form, tenor or effect as follows (after following the form in section one):

That A ....., on the ..... day of ....., nineteen ....., in the said county of ....., and within one year before the finding of this indictment, did unlawfully keep and maintain a certain house of ill fame, assignation house or house of like character, resorted to for the purposes of prostitution and lewdness, against the peace and dignity of the state.

And for letting a house for like purposes, the indictment shall be sufficient if it be in the following form, tenor or effect (after following the form in section one):

That A....., on the ..... day of ....., nineteen ....., in the said county of ....., and within one year before the finding of this indictment, being the owner of a certain house then and there situate in said county at ....., did then and there unlawfully and knowingly lease, let, rent and permit the same to be rented, leased and used , unlawfully and knowingly, by B ..... for the purpose of prostitution and lewdness, against the peace and dignity of the state.

§62-10-1. Security to keep the peace.

Every magistrate shall have the power to require, from persons not of good fame, security for their good behavior and to keep the peace, for a term not exceeding one year. A person who violates a court order to keep the peace may be fined not more than $250.

§62-10-2. Intended offense -- Complaint; warrant.

If complaint be made to any justice, that there is good cause to fear that a person intends to commit an offense against the person or property of another, he shall examine the complainant on oath, and any witnesses who may be produced, reduce the complaint to writing, and cause it to be signed by the complainant. If it appear proper, such justice shall issue a warrant, reciting the complaint, and requiring the person complained of forthwith to be apprehended and brought before him or some other justice of the county.

§62-10-3. Hearing, judgment, appeal process for security to keep the peace.

When a defendant appears pursuant to section one, article ten, chapter sixty-two of the Code of West Virginia, if the magistrate, upon hearing the parties, decides that there is not good cause for the complaint, the magistrate shall discharge the defendant, and may grant judgment in the defendant's favor and against the complainant for the defendant's costs. If the magistrate decides there is good cause for the complaint, he or she may grant judgment for the complainant and may require a bond of the person against whom the judgment is granted. The magistrate may then enter a judgment against the defendant for the full costs of the prosecution, or any part thereof. If the defendant violates the conditions of the bond, he or she may be fined not more than $250. If the defendant fails to pay the fine imposed, the magistrate granting the judgment under this section for costs may, pursuant to article four, chapter thirty-eight of the Code of West Virginia issue a writ of execution on the defendant's personal property. A person from whom a bond is required may, upon the imposition of the bond, appeal the judgment to the circuit court of the county in which the judgment was granted.

§62-10-4. Same -- Proceedings on appeal; discharge from commitment by circuit court.

The court may dismiss the complaint, or affirm the judgment, and make such order as it may deem proper as to the costs. If it award costs against the appellant, the recognizance which he may have given shall stand as surety therefor. When there is a failure to prosecute the appeal, such recognizance shall remain in force, although there be no order of affirmance. On any appeal the court may require of the appellant a new recognizance if it deem proper. Any person committed to jail under this article may be discharged by the circuit court, or the judge thereof in vacation, upon such terms as may be deemed reasonable.

§62-10-5. Recognizance in carrying weapons.

If any person go armed with a deadly, dangerous or prohibited weapon in violation of any of the provisions of article seven, chapter sixty-one of this code, he may be required to give a recognizance, with the right of appeal, as before provided, and like proceedings shall be had on such appeal.

§62-10-6. Offenses in presence of constable.

If any person shall, in the presence of a constable and within his county, make an affray, or threaten to beat, wound or kill another, or to commit violence against his person or property; or content with angry words to the disturbance of the peace; or improperly or indecently expose his person; or appear in a state of gross intoxication in a public place; such constable may, without warrant or other process, or further proof, arrest such offending person and take him before some justice of the county in which such offense is committed, who, upon hearing the testimony of such constable and other witnesses, if any are then and there produced, if, in his opinion the offense charged be proved, shall require the offender to give bond or recognizance, with surety, to keep the peace and be of good behavior for a term not exceeding one year.

§62-10-7. Offenses in presence of justice.

If any offense enumerated in section six of this article be committed in the presence of a justice within his county, or, the offender being brought before him the commission thereof be proved to his satisfaction, he may, besides requiring a bond or recognizance with surety, as provided in the preceding section, impose a fine upon the offender not exceeding $5. If such bond or recognizance be not then and there given, or such fine be not then and there paid, such justice shall commit the offender to the jail of his county, there to remain until such bond or recognizance be given, and such fine be paid; but no imprisonment under this section shall continue more than ten days, at the end of which the sheriff or jailer shall discharge the prisoner, unless he has been commanded by proper authority to detain him for some other cause.

§62-10-8. Special peace officers at fairs.

It shall be lawful for any justice of the peace, on the application of any of the officers of any state, county, or independent agricultural and mechanical association, agricultural society or industrial association of this state, to appoint a suitable number of discreet persons to assist in keeping the peace during the time when any such society shall be holding its annual or other fairs, and make an entry in his docket of the names of all such persons he shall so appoint.

All such persons so appointed by a justice shall have full power, and it shall be their duty, to suppress all riots, disturbances and breaches of the peace that may occur on such fair grounds, or within one mile thereof, during the time such fairs are being held, and may, upon view, arrest any person who may, at such time and place be guilty of violating any law of this state, and may pursue and arrest any such person anywhere in this state, and bring him before any justice of the county in which such offense was committed; and the justice, if he considers that there is sufficient cause to charge the party with violating the law, shall certify to the circuit court, or other court of record having jurisdiction in criminal cases in the county, the nature and character of the offense, and shall take from the party a recognizance, with good security, in the sum of not less than $100 nor more than $5,00, conditioned for his appearance before such court and to answer any indictment that may be made against him and not to depart without the leave of the court, and for his keeping the peace and being of good behavior until he shall appear before said circuit court; and the justice shall immediately transmit such certificate and recognizance to the clerk of such court, together with a list of the witnesses on the part of the state. Should the party fail to enter into such recognizance, the justice shall commit him to the county jail for trial, and shall make out a warrant of commitment to the jailer, who shall detain him in his custody until discharged by order of such court, unless he sooner enter into such recognizance before some justice of the county. Should such last-named recognizance be entered into, the justice taking the same shall transmit it to the clerk of the circuit court; and the justice making such commitment shall transmit a copy of it to said clerk, together with a list of the witnesses on the part of the state.

§62-10-9. Power and authority of sheriffs, deputy sheriffs and correctional officers to make arrests.

Sheriffs and each of their deputies are hereby authorized and empowered within their respective counties to make arrests for any crime for which a warrant has been issued in violation of any laws of the United States or of this state, and to make arrests without warrant for all violations of any of the criminal laws of the United States, or of this state, when committed in their presence. A correctional officer may execute a warrant, issued for the arrest of a person, only when the person named in the warrant is already in the custody of the officer or when the person voluntarily surrenders to the correctional officer at the county or regional jail or a state correctional facility at which the correctional officer is employed.

§62-11-1. Arrests within state by nonresident peace officer.

Any member of a duly organized state, county or municipal peace unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit, of a person in order to arrest him on the ground that he is believed to have committed a felony in such other state, shall have the same authority to arrest and hold such person in custody, as has any member of any duly organized state, county or municipal peace unit of this state to arrest and hold in custody a person on the ground that he is believed to have committed a felony in this state.

§62-11-2. Procedure upon arrest.

If an arrest is made in this state by an officer of another state in accordance with the provisions of section one of this article he shall without unnecessary delay take the person arrested before a magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the Governor of this state. If the magistrate determines that the arrest was unlawful he shall discharge the person arrested.

§62-11-3. Construction of §62-11-1.

Section one of this article shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful.

§62-11-4. "State" includes District of Columbia.

For the purpose of this article the word "state" shall include the District of Columbia.

§62-11-5. "Fresh pursuit" defined.

The term "fresh pursuit" as used in this article shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. Fresh pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

§62-11-6. Secretary of state to certify article.

It shall be the duty of the Secretary of State (or other officer) to certify a copy of this article to the executive department of each of the states of the United States.

§62-11-7. How article cited.

This article may be cited as the "Uniform Act on Fresh Pursuit."

§62-11A-1. Release for work and other purposes by courts of record with criminal jurisdiction.

(a) When a defendant is sentenced or committed for a term of one year or less by a court of record having criminal jurisdiction, the court may in its order grant to the defendant the privilege of leaving the jail during necessary and reasonable hours for any of the following purposes:

(1) To work at his or her employment;

(2) To seek employment;

(3) To conduct his or her own business or to engage in other self-employment, including housekeeping and attending to the needs of his or her family;

(4) To attend an educational institution;

(5) To obtain medical treatment;

(6) To devote time to any other purpose approved of or ordered by the court, including participation in the litter control program of the county unless the court specifically finds that this alternative service would be inappropriate.

(b) When a defendant is sentenced or committed for a term of one year or less by a magistrate of the state of West Virginia having criminal jurisdiction, the court may in its order grant to the defendant the privilege of leaving the jail during necessary and reasonable hours to work at his or her employment.

(c) Whenever an inmate who has been granted the privilege of leaving the jail under this section is not engaged in the activity for which the leave is granted, he or she shall be confined in jail.

(d) An inmate sentenced to ordinary confinement may petition the court at any time after sentence for the privilege of leaving jail under this section and may renew his or her petition in the discretion of the court. The court may withdraw the privilege at any time by order entered with or without notice.

(e) If the inmate has been granted permission to leave the jail to seek or take employment, the court's probation officers or, if none, the jail shall assist him or her in obtaining suitable employment and in making certain that employment already obtained is suitable. Employment shall not be deemed suitable if the wages or working conditions or other circumstances present a danger of exploitation or of interference in a labor dispute in the establishment in which the inmate would be employed.

(f) An inmate who is serving his or her sentence pursuant to this section shall be eligible for

a reduction of his or her term for good behavior and faithful performance of duties in the same manner as if he or she had served his or her term in ordinary confinement.

(g) The court shall not make an order granting the privilege of leaving the institution under this section unless it is satisfied that there are adequate facilities for the administration of such privilege in the jail or other institution in which the defendant will be confined.

(h) In every case wherein the defendant has been convicted of an offense, defined in section twelve, article eight, chapter sixty-one of this code or in article eight-b or eight-d of said chapter against a child, the defendant shall not live in the same residence as any minor child, nor exercise visitation with any minor child and shall have no contact with the victim of the offense: Provided, That the defendant may petition the court of the circuit wherein he or she was so convicted for a modification of this term and condition of this probation and the burden shall rest upon the defendant to demonstrate that a modification is in the best interest of the child.

§62-11A-1a. Other sentencing alternatives.

(a) Any person who has been convicted in a municipal court, circuit court, or in a magistrate court under any criminal provision of this code of a misdemeanor or felony, or municipal ordinance, which is punishable by imposition of a fine or confinement in a regional jail or a state correctional institution, or both fine and confinement, may, in the discretion of the sentencing judge or magistrate, as an alternative to the sentence imposed by statute or ordinance for the crime, be sentenced under one of the following programs:

(1) The weekend jail program under which a person would be required to spend weekends or other days normally off from work in jail;

(2) The work program under which a sentenced person would be required to spend the first two or more days of his or her sentence in jail and then, in the discretion of the court, would be assigned to a municipal, county, or state agency to perform labor within the jail, or in and upon the buildings, grounds, institutions, bridges, and roads, including orphaned roads used by the general public and public works within the municipality, county, or state. Eight hours of labor are to be credited as one day of the sentence imposed. A person sentenced under this program may be required to provide his or her own transportation to and from the work site, lunch, and work clothes;

(3) The community service program under which a sentenced person would spend no time in jail, but would be sentenced to a number of hours or days of community service work with government entities or charitable or nonprofit entities approved by the circuit court. Regarding any portion of the sentence designated as confinement, eight hours of community service work is to be credited as one day of the sentence imposed. Regarding any portion of the sentence designated as a fine, the fine is to be credited at an hourly rate equal to the prevailing federal minimum wage at the time the sentence was imposed. In the discretion of the court, the sentence credits may run concurrently or consecutively. A person sentenced under this program may be required to provide his or her own transportation to and from the work site, lunch, and work clothes; or

(b) In no event may the duration of the alternate sentence exceed the maximum period of incarceration otherwise allowed.

(c) In imposing a sentence under the provisions of this section, the court shall first make the following findings of fact and incorporate them into the court’s sentencing order:

(1) The person sentenced was not convicted of an offense for which a mandatory period of confinement is imposed by statute;

(2) In circuit court cases, that the person sentenced is not a habitual criminal within the meaning of §61-11-18 and §61-11-19 of this code;

(3) In circuit court cases, that the offense underlying the sentence is not a felony offense for

which violence or the threat of violence to the person is an element of the offense;

(4) In circuit court cases, that adequate facilities for the administration and supervision of alternative sentencing programs are available through the court's probation officers or the county sheriff or, in magistrate court cases, that adequate facilities for the administration and supervision of alternative sentencing programs are available through the county sheriff; and

(5) That an alternative sentence under provisions of this article will best serve the interests of justice.

(d) A person sentenced by the circuit court under the provisions of this article remains under the administrative custody and supervision of the court's probation officers or the county sheriff. A person sentenced by a magistrate remains under the administrative custody and supervision of the county sheriff. A person sentenced by a municipal judge would be under the supervision of the city department for whom work is performed.

(e) A person sentenced under the provisions of this section may be required to pay the costs of his or her incarceration, including meal costs: *Provided,* That the judge or magistrate considers the person's ability to pay the costs.

(f) A person sentenced under the provisions of this section remains under the jurisdiction of the court. The court may withdraw any alternative sentence at any time by order entered with or without notice and require that the remainder of the sentence be served in the county jail, a regional jail or a state correctional facility: *Provided,* That no alternative sentence directed by the sentencing judge or magistrate or administered under the supervision of the sheriff, his or her deputies, a jailer, or a guard may require the convicted person to perform duties which would be considered detrimental to the convicted person's health as attested to by a physician.

(g) No provision of this section may be construed to limit a circuit judge's ability to impose a period of supervision or participation in a community corrections program created pursuant to §62-11C-1 *et seq*. of this code, except that a person sentenced to a day report center must be identified as moderate to high risk of reoffending and moderate to high criminogenic need, as defined by the standardized risk and needs assessment adopted by the Supreme Court of Appeals of West Virginia under §62-12-6d of this code, and applied by a probation officer or day report staff: *Provided*, That a judge may impose a period of supervision or participation in a day report center, notwithstanding the results of the standardized risk and needs assessment, upon making specific written findings of fact as to the reason for departing from the requirements of this section.

(h) Magistrates may only impose a period of participation in a day report center with the consent by general administrative order of the supervising judge or chief judge of the judicial circuit in which he or she presides. The day report center staff shall determine which services a person receives based on the results of the standardized risk and needs

assessment adopted by the Supreme Court of Appeals of West Virginia under §62-12-6d of this code, along with any other conditions of supervision set by the court.

(i) There is hereby authorized a program whereby a sentenced person in a regional jail or state correctional facility may be assigned to participate in performing requested tasks approved by the commissioner for municipal, county, and state agencies that could use such services as cleaning up streams, state parks, streets and highways, and similar services.

§62-11A-2. Employment by county.

With the approval of the county sheriff, the county court of any county is hereby authorized to employ any person imprisoned upon conviction for a misdemeanor in a county jail to work within the county as the county court may decide. In such instance the wages to be paid to the prisoner shall be no less than $1 per hour. Such prisoners shall remain in the custody of and be supervised by said sheriff. No imprisoned person shall be required to work without his consent.

§62-11A-3. Personnel status; limitation on liability of public officials and county and community service work agencies.

(a) No person sentenced under any provision of this article shall be regarded as an employee of the sheriff, county commission or the county or community service work agency to which the person sentenced is assigned for any purpose, including, but not limited to, workers' compensation, civil service, unemployment compensation, public employees insurance or public employees retirement.

(b) Neither the sheriff, the county commission or community service agency to which the person is assigned shall be liable for injury or damage to third parties intentionally committed by the person so sentenced or for any action on behalf of the person so sentenced except in the case of gross negligence on the part of the sheriff, county commission or community service agency or the supervisor of the person so sentenced: Provided, That nothing herein shall bar a claim by a third party for injury or damage resulting from the negligent act of the person so sentenced committed outside the confines of a county jail and within the scope of the work required by the alternative sentence.

§62-11A-4. Violations; penalties.

(a) Any person lawfully confined in jail on conviction of one or more felonies, or on conviction of one or more felonies and one or more misdemeanors, who has been granted release for work or other purposes under section one-a of this article, and who fails to return to jail at the times designated in the release order with the intent to evade lawful detention, shall be guilty of an additional felony, and, upon conviction, may be confined in the penitentiary for not less than one nor more than five years.

(b) Any person lawfully confined in jail on conviction of one or more misdemeanors, who has been granted release for work or other purposes under section one-a of this article, and who fails to return to jail at the times designated in the release order with the intent to evade lawful detention, shall be guilty of a misdemeanor and, upon conviction, may be confined in jail for up to one year.

§62-11B-1. Short title.

This article may be cited as the "Home Incarceration Act."

§62-11B-2. Applicability.

This article applies to adult offenders and to juveniles who have committed a delinquent act that would be a crime if committed by an adult.

§62-11B-3. Definitions.

As used in this article:

(1) "Home" means the actual living area of the temporary or permanent residence of an offender. The term includes, but is not limited to, a hospital, health care facility, hospice, group home, residential treatment facility and boarding house.

(2) "Monitoring device" means an electronic device that is:

(A) Limited in capability to the recording or transmitting of information regarding an offender's presence or absence from the offender's home and his or her use or lack of use of alcohol or controlled substances;

(B) Minimally intrusive upon the privacy of other persons residing in the offender's home; and

(C) Incapable of recording or transmitting:

(i) Visual images;

(ii) Oral or wire communications or any Auditory sound; or

(iii) Information regarding the offender's activities while inside the offender's home without the offender's knowledge or consent.

(3) "Offender" means any adult convicted of a crime punishable by imprisonment or detention in a county jail or state penitentiary; or a juvenile convicted of a delinquent act that would be a crime punishable by imprisonment or incarceration in the state penitentiary or county jail, if committed by an adult.

§62-11B-4. Home incarceration; period of home incarceration; applicability.

(a) As a condition of probation or bail or as an alternative sentence to another form of incarceration for any criminal violation of this code over which a circuit court has jurisdiction, a circuit court may order an offender confined to the offender's home for a period of home incarceration. As an alternative sentence to incarceration in jail for any criminal violation of this code over which a magistrate court has jurisdiction or as a condition of bail for a criminal violation of this code over which a magistrate court has jurisdiction to set bail, a magistrate may order an offender confined to the offender's home for a period of electronically monitored home incarceration: Provided, That electronic monitoring may not be required in a specific case if a circuit court upon petition thereto finds by order that electronic monitoring is not necessary.

(b) The period of home incarceration may be continuous or intermittent, as the circuit court or magistrate court orders. However, the aggregate time actually spent in home incarceration may not exceed the term of imprisonment or incarceration prescribed by this code for the offense committed by the offender.

(c) A grant of home incarceration under this article constitutes a waiver of any entitlement to deduction from a sentence for good conduct under the provisions of section twenty-seven, article five, chapter twenty-eight of this code.

(d) When imposing home incarceration as a condition of bail, a magistrate shall do so consistent with guidelines promulgated by the Supreme Court of Appeals.

§62-11B-5. Requirements for order for home incarceration.

An order for home incarceration of an offender under section four of this article is to include, but not be limited to, the following:

(1) A requirement that the offender be confined to the offender's home at all times except when the offender is:

(A) Working at employment approved by the circuit court or magistrate, or traveling to or from approved employment;

(B) Unemployed and seeking employment approved for the offender by the circuit court or magistrate;

(C) Undergoing medical, psychiatric, mental health treatment, counseling or other treatment programs approved for the offender by the circuit court or magistrate;

(D) Attending an educational institution or a program approved for the offender by the circuit court or magistrate;

(E) Attending a regularly scheduled religious service at a place of worship;

(F) Participating in a community work release or community service program approved for the offender by the circuit court, in circuit court cases; or

(G) Engaging in other activities specifically approved for the offender by the circuit court or magistrate.

(2) Notice to the offender of the penalties which may be imposed if the circuit court or magistrate subsequently finds the offender to have violated the terms and conditions in the order of home incarceration.

(3) A requirement that the offender abide by a schedule, prepared by the probation officer in circuit court cases, or by the supervisor or sheriff in magistrate court cases, specifically setting forth the times when the offender may be absent from the offender's home and the locations the offender is allowed to be during the scheduled absences.

(4) A requirement that the offender is not to commit another crime during the period of home incarceration ordered by the circuit court or magistrate.

(5) A requirement that the offender obtain approval from the probation officer or supervisor or sheriff before the offender changes residence or the schedule described in subdivision (3) of this section.

(6) A requirement that the offender maintain:

(A) A working telephone in the offender's home;

(B) If ordered by the circuit court or as ordered by the magistrate, an electronic monitoring device in the offender's home, or on the offender's person, or both; and

(C) Electric service in the offender's home if use of a monitoring device is ordered by the circuit court or any time home incarceration is ordered by the magistrate.

(7) A requirement that the offender pay a home incarceration fee set by the circuit court or magistrate. If a magistrate orders home incarceration for an offender, the magistrate shall follow a fee schedule established by the supervising circuit judge in setting the home incarceration fee. The magistrate or circuit judge shall consider the person's ability to pay in determining the imposition and amount of the fee;

(8) A requirement that the offender pay a fee authorized by the provisions of section four, article eleven-c of this chapter: Provided, That the magistrate or circuit judge considers the person's ability to pay in determining the imposition and amount of the fee; and

(9) A requirement that the offender abide by other conditions set by the circuit court or by the magistrate.

§62-11B-6. Circumstances under which home incarceration may not be ordered; exceptions.

(a) A circuit court or magistrate may not order home incarceration for an offender unless the offender agrees to abide by all of the requirements set forth in the court's order issued under this article.

(b) A circuit court or magistrate may not order home incarceration for an offender who is being held under a detainer, warrant or process issued by a court of another jurisdiction.

(c) A magistrate may not order home incarceration for an offender unless electronic monitoring is available and only if the county of the offender's home has an established program of electronic monitoring that is equipped, operated and staffed by the county supervisor or sheriff for the purpose of supervising participants in a home incarceration program: Provided, That electronic monitoring may not be required in a specific case if a circuit court upon petition thereto finds by order that electronic monitoring is not necessary.

(d) A magistrate may only order home incarceration for an offender convicted of a crime of violence against the person if the offender does not occupy the same home as the victim of the crime.

(e) Home incarceration is not available as a sentence if the language of a criminal statute expressly prohibits its application.

(f) Notwithstanding the provisions of subsection (c) of this section, a magistrate may order home incarceration through the imposition of supervision or participation in a community corrections program created pursuant to article eleven-c, chapter sixty-two of this code.

§62-11B-7. Home incarceration fees; special fund.

All home incarceration fees ordered by the circuit court or a magistrate pursuant to subdivision (7), section five of this article are to be paid to the county sheriff. The county sheriff is to establish a special fund designated the home incarceration services fund, in which the sheriff is to deposit all home incarceration fees collected pursuant to this section. The county commission shall appropriate money from the fund to administer a home incarceration program, including the purchase of electronic monitoring devices and other supervision expenses, and may as necessary supplement the fund with additional appropriations. The county commission may also appropriate any excess money from the fund to defray the costs of housing county inmates or for community corrections programs, if the sheriff or other person designated to administer the fund certifies in writing to the county commission that a surplus exists in the fund at the end of the fiscal year.

§62-11B-7a. Employment by county commission of home incarceration supervisors; authority of supervisors.

The county commission may employ one or more persons with the approval of the circuit court and who shall be subject to the supervision of the sheriff as a home incarceration supervisor or may designate the county sheriff to supervise offenders ordered to undergo home incarceration and to administer the county's home incarceration program. Any person so supervising shall have authority, equivalent to that granted to a probation officer pursuant to section ten, article twelve of this chapter, to arrest a home incarceration participant when reasonable cause exists to believe that such participant has violated the conditions of his or her home incarceration. Unless otherwise specified, the use of the term "supervisor" in this article shall refer to a home incarceration supervisor.

§62-11B-7b. Home incarceration supervisors deemed qualified law-enforcement officers as that term is used in 18 U.S.C. §926B.

(a) Notwithstanding any other provision of this code, for purposes of this section it is hereby recognized that home incarceration is a form of confinement as that term is used in 18 U.S.C. § 926B.

(b) In recognition of the duties of their employment supervising confinement and supervised release, and the inherent arrest powers for violation of the same which constitute law enforcement, home incarceration supervisors, are determined to be qualified law-enforcement officers as that term is used in 18 U.S.C. § 926B.

(c) Any home incarceration supervisor may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. § 926B if the following criteria are met:

(1) The home incarceration program has a written policy authorizing home incarceration supervisors to carry a concealed firearm for self-defense purposes.

(2) There is in place in the home incarceration program a requirement that the home incarceration supervisors must regularly qualify in the use of a firearm with standards for qualification which are equal to, or exceed those required of sheriff's deputies in the county in which the home incarceration supervisors are employed; and

(3) The home incarceration program issues a photographic identification and certification card which identify the home incarceration supervisors as law-enforcement employees of the home incarceration program of §30-29-12 of this code.

(d) Any policy instituted pursuant to subsection (b) of this section shall include provisions which:

(1) Preclude or remove a person from participation in the concealed firearm program;

(2) Preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm; and

(3) Prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defines in §17C-5-2 of this code.

(e) Any home incarceration supervisor who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(f) The privileges authorized by the amendments to this section enacted during the 2022, regular session of the Legislature are wholly within the discretion of the supervising authority over the home incarceration supervisors.

(g) It is the intent of the Legislature in enacting the amendments to this section during the 2021 regular session of the Legislature to authorize home incarceration programs wishing to do so to allow home incarceration supervisors to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. § 926B.

§62-11B-8. Offender responsible for certain expenses.

An offender ordered to undergo home incarceration under section four of this article is responsible for providing his own food, housing, clothing, medical care and other treatment expenses. The offender is eligible to receive government benefits allowable for persons on probation, parole or other conditional discharge from confinement or incarceration.

§62-11B-9. Violation of order of home incarceration procedures; penalties.

(a) If, at any time during the period of home incarceration, there is reasonable cause to believe that a participant in a home incarceration program has violated the terms and conditions of the circuit court's home incarceration order, he or she is subject to the procedures and penalties set forth in section ten, article twelve of this chapter.

(b) If, at any time during the period of home incarceration, there is reasonable cause to believe that a participant sentenced to home incarceration by the circuit court has violated the terms and conditions of the court's order of home incarceration and the participant's participation was imposed as an alternative sentence to another form of incarceration, the participant is subject to the same procedures involving confinement and revocation as would a probationer charged with a violation of the order of home incarceration. Any participant under an order of home incarceration is subject to the same penalty or penalties, upon the circuit court's finding of a violation of the order of home incarceration, as he or she could have received at the initial disposition hearing: Provided, That the participant shall receive credit towards any sentence imposed after a finding of violation for the time spent in home incarceration.

(c) If, at any time during the period of home incarceration, there is reasonable cause to believe that a participant sentenced to home incarceration by a magistrate has violated the terms and conditions of the magistrate's order of home incarceration as an alternative sentence to incarceration in jail, the supervising authority may arrest the participant and take the offender before a magistrate within the county of the offense. The magistrate shall then conduct a prompt and summary hearing on whether the participant's home incarceration should be revoked. If it appears to the satisfaction of the magistrate that any condition of home incarceration has been violated, the magistrate may revoke the home incarceration and order that the sentence of incarceration in jail be executed. Any participant under an order of home incarceration is subject to the same penalty or penalties, upon the magistrate's finding of a violation of the order of home incarceration, as the participant could have received at the initial disposition hearing: Provided, That the participant shall receive credit towards any sentence imposed after a finding of violation for the time spent in home incarceration.

§62-11B-10. Information to be provided law-enforcement agencies.

A probation department charged by a circuit court or a supervisor or sheriff charged by a magistrate with supervision of offenders ordered to undergo home incarceration shall provide all law-enforcement agencies having jurisdiction in the place where the probation department or the office of the supervisor or sheriff is located with a list of offenders under home incarceration supervised by the probation department, supervisor or sheriff. The list must include the following information about each offender:

(1) The offender's name, any known aliases, and the location of the offender's home incarceration;

(2) The crime for which the offender was convicted;

(3) The date the offender's home incarceration expires; and

(4) The name, address and telephone number of the offender's supervising probation officer or supervisor, as the case may be, for home incarceration.

§62-11B-11. Discretion of the court; provisions of article not exclusive.

(a) Home incarceration pursuant to the provisions of this article may be imposed at the discretion of the circuit court or magistrate court as an alternative means of incarceration for any offense. Except for offenses for which the penalty includes mandatory incarceration, home incarceration may not be considered an exclusive means of alternative sentencing.

(b) Upon conviction of a person, the circuit court, magistrate court or municipal court may, in its discretion, grant credit for time spent on home incarceration as a condition of bail toward any sentence imposed, if the person is found to have complied with the terms of bail.

§62-11B-12. Supervision of home incarceration by circuit court.

(a) Notwithstanding any provision of this code to the contrary, in any case where a person has been ordered to home incarceration where that person is not in the custody or control of the Division of Corrections, the circuit court shall have the authority of the board of probation and parole regarding the release, early release or release on parole of the person.

(b) Any person paroled from a sentence of home incarceration imposed by the provisions of this article shall be supervised by the probation office of the sentencing court. If at any time during the period of parole there is reasonable cause to believe that the person paroled has violated the terms and conditions of his or her parole, he or she shall be subject to the procedures and penalties set forth in section ten, article twelve of this chapter. If at any time during the period of parole from home incarceration there is reasonable cause to believe that the person paroled has violated the terms and conditions of his or her parole and the home incarceration was imposed as an alternative sentence to another form of incarceration, he or she shall be subject to the same penalty or penalties as he or she could have received at the initial disposition hearing. Time served on parole granted shall be credited for time served toward any remainder of the maximum sentence in the event of parole revocation: Provided, That time served on parole from home incarceration may not be credited towards any reduction of sentence for good conduct towards any remainder of the maximum sentence in the event of parole revocation.

§62-11B-13. Home incarceration for municipal court offenders.

Notwithstanding any provision of this article to the contrary, when a person is convicted under a municipal ordinance for which a period of incarceration may be imposed, the municipal court may enter an order for home incarceration as an alternative sentence to incarceration in a county or regional jail. A home incarceration sentence ordered by a municipal court pursuant to the provisions of this section is subject to the same requirements and conditions as a home incarceration sentence imposed by a circuit court or magistrate court pursuant to the provisions of this article. All home incarceration fees ordered by the municipal court pursuant to subdivision (7), section five of this article are to be paid to the municipal clerk, who shall monthly remit the fees to the sheriff.

§62-11C-1. Legislative intent.

(a) The Legislature hereby declares that the purpose of this article is to enable any county or Class I or II municipality or any combination of counties and Class I or II municipalities to develop, establish and maintain community-based corrections programs to provide the judicial system with sentencing alternatives for those offenders who may require less than institutional custody.

(b) The goals of developing community-based corrections programs include:

(1) Allowing individual counties or combinations of a county or counties and a Class I or II municipality greater flexibility and involvement in responding to the problem of crime in their communities;

(2) Providing more effective protection of society and promoting efficiency and economy in the delivery of correctional services;

(3) Providing increased opportunities for offenders to make restitution to victims of crime through financial reimbursement;

(4) Permitting counties or combinations of a county or counties and a Class I or II municipality to operate programs specifically designed to meet the rehabilitative needs of offenders;

(5) Providing appropriate sentencing alternatives with the goal of reducing the incidence of repeat offenders;

(6) Permitting counties or combinations of a county or counties and a Class I or II municipality to designate community-based programs to address local criminal justice needs;

(7) Diverting offenders from the state regional jail or correctional facilities by punishing them with community-based sanctions, thereby reserving state regional jail or correctional facilities for those offenders who are deemed to be most dangerous to the community; and

(8) Promoting accountability of offenders to their community.

§62-11C-2. Community Corrections Subcommittee.

(a) A Community Corrections Subcommittee of the Governor's Committee on Crime, Delinquency and Correction is continued and continues to be assigned responsibility for screening community corrections programs for approval for funding by the subcommittee and for making disbursement of funds for approved community corrections programs.

(b) The subcommittee shall be comprised of the following members:

(1) A representative of the Division of Corrections;

(2) A representative of the Regional Jail and Correctional Facility Authority;

(3) A representative of the Bureau for Behavioral Health and Health Facilities;

(4) A person representing the interests of victims of crime;

(5) An attorney employed by a public defender corporation;

(6) An attorney who is licensed to practice and practicing criminal law in this state;

(7) A prosecuting attorney or assistant prosecuting attorney actively engaged as such in this state;

(8) A representative of the West Virginia Coalition Against Domestic Violence; and

(9) At the discretion of the Supreme Court of Appeals, the Administrator of the Supreme Court of Appeals, a probation officer and a circuit judge may serve on the subcommittee as ex officio, nonvoting members.

(c) The subcommittee shall elect a chairperson and a vice chairperson. The subcommittee shall meet quarterly. Special meetings may be held upon the call of the chairperson, vice chairperson or a majority of the members of the subcommittee. A majority of the members of the subcommittee constitutes a quorum.

(d) The subcommittee may adopt bylaws, policies and procedures for the operation of the subcommittee.

(e) The subcommittee may propose legislative rules for legislative approval pursuant to article three, to chapter twenty-nine-a of this code for policies and procedures consistent with the duties and responsibilities which are or may be assigned to it.

(f) Any member appointed to the subcommittee who is a written designated representative has the full rights of a member, including the right to vote, serve on subcommittees or perform any other function.

§62-11C-3. Duties of the subcommittee.

(a) The subcommittee shall propose for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code legislative rules to:

(1) Establish standards for approval of community corrections programs submitted by community criminal justice boards or other entities authorized by the provisions of this article to do so;

(2) Establish minimum standards for community corrections programs to be funded, including requiring annual program evaluations;

(3) Make any necessary adjustments to the fees established in section four of this article;

(4) Establish reporting requirements for community corrections programs; and

(5) Carry out the purpose and intent of this article.

(b) The subcommittee shall:

(1) Maintain records of community corrections programs including the corresponding community criminal justice board or other entity contact information and annual program evaluations, when available;

(2) Seek funding for approved community corrections programs from sources other than the fees collected pursuant to section four of this article; and

(3) Provide funding for approved community corrections programs, as available.

(c) The subcommittee shall submit, on or before September 30 of each year, to the Governor, the Speaker of the House of Delegates, the President of the Senate and, upon request, to any individual member of the Legislature a report on its activities during the previous year and an accounting of funds paid into and disbursed from the special revenue account established pursuant to section four of this article. The subcommittee may make recommendations to the Governor's Committee on Crime, Delinquency and Correction for legislation related to the subcommittee's duties and responsibilities, or for research or studies by the Division of Justice and Community Services on topics related to the subcommittee's duties and responsibilities.

(d) The subcommittee shall review the implementation of evidence-based practices and conduct regular assessments for quality assurance of all community-based criminal justice services, including day report centers, probation, parole and home confinement. In consultation with the affected agencies, the subcommittee shall establish a process for reviewing performance. The process shall include review of agency performance measures and identification of new measures by the subcommittee, if necessary, for measuring the implementation of evidence-based practices or for quality assurance. After providing an

opportunity for the affected agencies to comment, the subcommittee shall submit, on or before September 30 of each year, to the Governor, the Speaker of the House of Delegates, the President of the Senate and, upon request, to any individual member of the Legislature a report on its activities and results from assessments of performance during the previous year.

§62-11C-4. Special revenue account.

(a) There is hereby created in the State Treasury a special revenue account to be known as the West Virginia Community Corrections Fund. Expenditures from the fund are for the purposes set forth in subsection (e) of this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code. The West Virginia Community Corrections Fund may receive any gifts, grants, contributions or other money from any source which is specifically designated for deposit in the fund.

(b) In addition to the fee required in section nine, article twelve of this chapter, a fee not to exceed $35 per month, unless modified by legislative rule as provided in section three of this article, is also to be collected from those persons on probation. This fee is to be based upon the person's ability to pay. The magistrate or circuit judge shall conduct a hearing prior to imposition of probation and make a determination on the record that the offender is able to pay the fee without undue hardship. The magistrate clerk, deputy magistrate clerk, magistrate assistant, circuit clerk or deputy circuit clerk shall collect all fees imposed pursuant to this subsection and deposit them in a separate account. Within ten calendar days following the beginning of the calendar month, the magistrate clerk or circuit clerk shall forward the amount deposited to the State Treasurer to be credited to the West Virginia Community Corrections Fund.

(c) In addition to the fee required in section five, article eleven-b of this chapter, a fee of $2.50 per day, unless modified by legislative rule as provided in section three of this article, is to be collected from those persons on home incarceration. The circuit judge, magistrate or municipal court judge shall consider the person's ability to pay in determining the imposition of the fee. The circuit clerk, magistrate clerk, municipal court clerk or his or her designee shall collect all fees imposed pursuant to this subsection and deposit them in a separate account. Within ten calendar days following the beginning of the calendar month, the circuit clerk, magistrate clerk or municipal court clerk shall forward the amount deposited to the State Treasurer to be credited to the West Virginia Community Corrections Fund.

(d) In addition to the usual court costs in any criminal case taxed against any defendant convicted in a municipal, magistrate or circuit court, excluding municipal parking ordinances, a $10 fee shall be added, unless the fee is modified by legislative rule as provided in section three of this article. The circuit clerk, magistrate clerk, municipal court clerk or his or her designee shall collect all fees imposed pursuant to this subsection and deposit them in a separate account. Within ten calendar days following the beginning of the calendar month, the circuit clerk, magistrate court clerk and the municipal court clerk shall forward the amount deposited to the State Treasurer to be credited to the West Virginia Community Corrections Fund.

(e) The moneys of the West Virginia Community Corrections Fund are to be disbursed by the subcommittee for the funding of community corrections programs and to pay expenses of the

subcommittee in administering the provisions of this article, which expenses may not in any fiscal year exceed fifteen percent of the funds deposited to the special revenue account during that fiscal year.

(f) Any disbursements from the West Virginia Community Corrections Fund allocated for community corrections programs by the subcommittee may be made contingent upon local appropriations or gifts in money or in kind for the support of the programs. Any county commission of any county or the governing body of a municipality may appropriate and expend money for establishing and maintaining community corrections programs.

§62-11C-5. Establishment of programs.

(a) Any county or combination of counties, or a county or counties and a Class I or II municipality, may establish and operate community corrections programs, as provided in this section, to be used both prior to trial as a condition of bond in circuit and magistrate court, as well as an alternative sentencing option for those offenders sentenced within the jurisdiction of the county or counties which establish and operate the program: Provided, That the chief judge must certify that the community corrections facility is available for use in connection with the imposition of pretrial bond conditions.

(b) Any county or combination of counties, or a county or counties and a Class I or II municipality, that seek to establish programs as authorized in this section shall submit plans and specifications for the programs to be established, including proposed budgets, for review and approval by the community corrections subcommittee established in section three of this article.

(c) Any county or combination of counties, or a county or counties and a Class I or II municipality, may establish and operate an approved community corrections program to provide alternative sanctioning options for an offender who is convicted of an offense for which he or she may be sentenced to a period of incarceration in a county or regional jail or a state correctional facility and for which probation or home incarceration may be imposed as an alternative to incarceration.

(d) Community corrections programs authorized by subsection (a) of this section may provide, but are not limited to providing, any of the following services:

(1) Probation supervision programs;

(2) Community service restitution programs;

(3) Home incarceration programs;

(4) Substance abuse treatment programs;

(5) Sex offender containment programs;

(6) Licensed domestic violence offender treatment programs;

(7) Day reporting centers;

(8) Educational or counseling programs;

(9) Drug courts;

(10) Community beautification and reclamation programs for state highways, municipal, county and state parks and recreation areas and community gardens; and

(11) Pretrial release programs.

(e) A county or combination of counties, or a county or counties and a Class I or II municipality, which establish and operate community corrections programs as provided in this section may contract with other counties to provide community corrections services.

(f) For purposes of this section, the phrase "may be sentenced to a period of incarceration" means that the statute defining the offense provides for a period of incarceration as a possible penalty.

(g) No provision of this article may be construed to allow a person participating in or under the supervision of a community corrections program to earn good time or any other reduction in sentence.

(h) Nothing in this section should be construed as to prohibit a court from imposing a surety bond as a condition of a pretrial release.

§62-11C-6. Community criminal justice boards.

(a) Each county or combination of counties or a county or counties and a Class I or II municipality that seek to establish community-based corrections services shall establish a community criminal justice board. Any county which chooses to operate without a community criminal justice board is subject to the regulations and requirements established by the subcommittee.

(b) A community criminal justice board shall consist of no more than fifteen voting members.

(c) All members of a community criminal justice board shall be residents of the county or counties represented.

(d) A community criminal justice board shall consist of the following members:

(1) The sheriff or chief of police or, if the board represents more than one county or municipality, at least one sheriff or chief of police from the counties represented;

(2) The prosecutor or, if the board represents more than one county, at least one prosecutor from the counties represented;

(3) If a public defender corporation exists in the county or counties represented, at least one attorney employed by any public defender corporation existing in the counties represented or, if no public defender office exists, one criminal defense attorney from the counties represented;

(4) One member to be appointed by the local board of education or, if the board represents more than one county, at least one member appointed by a board of education of the counties represented;

(5) One member with a background in mental health care and services to be appointed by the commission or commissions of the county or counties represented by the board;

(6) Two members who can represent organizations or programs advocating for the rights of victims of crimes with preference given to organizations or programs advocating for the rights of victims of the crimes of domestic violence or driving under the influence;

(7) One member with a background in substance abuse treatment and services to be appointed by the commission or commissions of the county or counties represented by the board; and

(8) Three at-large members to be appointed by the commission or commissions of the county or counties represented by the board.

(e) At the discretion of the Supreme Court of Appeals, any or all of the following people may serve on a community criminal justice board as ex officio, nonvoting members:

(1) A circuit judge from the county or counties represented;

(2) A magistrate from the county or counties represented; or

(3) A probation officer from the county or counties represented.

(f) Community criminal justice boards may:

(1) Provide for the purchase, development and operation of community corrections services;

(2) Coordinate with local probation departments in establishing and modifying programs and services for offenders;

(3) Evaluate and monitor community corrections programs, services and facilities to determine their impact on offenders; and

(4) Develop and apply for approval of community corrections programs by the Governor's Committee on Crime, Delinquency and Correction.

(g) If a community criminal justice board represents more than one county, the appointed membership of the board, excluding any ex officio members, shall include an equal number of members from each county, unless the county commission of each county agrees in writing otherwise.

(h) If a community criminal justice board represents more than one county, the board shall, in consultation with the county commission of each county represented, designate one county commission as the fiscal agent of the board.

(i) Any political subdivision of this state operating a community corrections program shall, regardless of whether or not the program has been approved by the Community Corrections Subcommittee of the Governor's Committee on Crime, Delinquency and Correction, provide to the subcommittee required information regarding the program's operations.

§62-11C-7. Supervision or participation fee.

(a) A circuit judge, magistrate, municipal court judge or community criminal justice board may require the payment of a supervision or participation fee from any person required to be supervised by or participate in a community corrections program. The circuit judge, magistrate, municipal court judge or community criminal justice board shall consider the person's ability to pay in determining the imposition and amount of the fee.

(b) A circuit judge, magistrate or community criminal justice board may require payment of a supervision or participation fee of $7 per person per day of pretrial supervision from the county commission pursuant to a pretrial release program established pursuant to article eleven-f of this chapter.

(c) A person supervised pursuant to the provisions of article eleven-f of this chapter who is later convicted of an offense or offenses underlying the person's participation in the pretrial release program may be assessed by the sentencing court, as a cost of prosecution, a fee not to exceed $30 per month for each month the person was in the pretrial supervision program.

(d) All fees ordered by the circuit court, magistrate court, municipal court or community criminal justice board pursuant to this section are to be paid to the community criminal justice board, who shall remit the fees monthly to the treasurer of the county designated as the fiscal agent for the board pursuant to section six of this article.

§62-11C-8. Local community criminal justice accounts.

(a) The treasurer of the county designated as the fiscal agent for the board pursuant to section six of this article shall establish a separate fund designated the community criminal justice fund. He or she shall deposit all fees remitted by the municipal, magistrate and circuit clerks pursuant to section seven of this article and all funds appropriated by a county commission pursuant to section seven, article eleven-b of this chapter or any other provision of this code and all funds provided by the subcommittee for approved community corrections programs in the community criminal justice fund. Funds in the community criminal justice account are to be expended by order of the designated county's commission upon recommendation of the community criminal justice board in furtherance of the operation of an approved community corrections program.

(b) A county commission representing the same county as a community criminal justice board may require the community criminal justice board to render an accounting, at intervals the county commission may designate, of the use of money, property, goods and services made available to the board by the county commission and to make available at quarterly intervals an itemized statement of receipts and disbursements, and its books, records and accounts during the preceding quarter, for audit and examination pursuant to article nine, chapter six of this code.

§62-11C-9. Use of community corrections programs for those not under court supervision.

(a) Subject to the availability of community corrections programs in the county, a written pretrial diversion agreement, entered into pursuant to the provisions of §61-11-22 of this code, may require participation or supervision in a community corrections program as part of the prosecution and resolution of charges. A court ordered deferred adjudication proceeding, pursuant to the provisions of §61-11-22a of this code, may require, through terms and conditions imposed upon a defendant, participation or supervision in a community corrections program.

(b) Any pretrial diversion program for a defendant where the alleged victim is a family or household member, shall require the person charged to appear before the presiding judge or magistrate and acknowledge his or her understanding of the terms of the agreement to the charge or charges. Upon the defendant's motion, the court shall continue the matter for the period of time necessary for the person charged to complete the pretrial diversion program. If the person charged successfully completes the pretrial diversion program, the matter is to be resolved pursuant to the terms of the pretrial diversion agreement. If the person charged fails to successfully complete the pretrial diversion program, the matter shall be returned to the court's docket for resolution.

(c) No provision of this article may be construed to limit the prosecutor's discretion to prosecute an individual who has not fulfilled the terms of a written pretrial diversion by not completing the required supervision or participation in a community corrections program.

(d) Notwithstanding any provision of this code to the contrary, any person whose case is disposed of by entering into a pretrial diversion agreement, pursuant to the provisions of §61-11-22 of this code is liable for any applicable court costs. Payment of the court costs shall be made a condition of the pretrial diversion agreement: *Provided*, That financial inability to pay court costs may not be a basis for denying a person a pretrial diversion.

(e) Subject to the availability of community corrections programs in the county, a written pretrial diversion agreement, entered into pursuant to the provisions of §61-11-22 of this code, may require participation or supervision in a community corrections program as part of the prosecution and resolution of charges. A deferred adjudication proceeding, pursuant to the provisions of §61-11-22a of this code, may require, through terms and conditions imposed upon a defendant, participation or supervision in a community corrections program.

(f) Any deferred adjudication where the alleged victim is a family or household member, or the provisions of §17C-5-2 of this code shall require the person charged to appear before the presiding judge or magistrate and either acknowledge his or her understanding of the terms of the agreement and tender a plea of guilty or nolo contendere to the charge or charges. Upon the defendant's motion, the court shall continue the matter and defer adjudication for the period of time necessary for the person charged to complete the period of deferred adjudication. If the person charged successfully completes the period of deferred

adjudication, the matter is to be resolved pursuant to the terms and conditions of the deferred adjudication as outlined by the court. If it is determined by the court that the defendant did not successfully complete the period of deferred adjudication, the court may accept the tendered plea of guilty or nolo contendere and proceed to sentencing or impose such other terms and conditions as the court deems appropriate, pursuant to the provisions of §61-11-22a of this code.

(g) Notwithstanding any provision of this code to the contrary, any person whose case is disposed of by entering into a deferred adjudication, pursuant to the provisions of §61-11-22a of this code is liable for any applicable court costs. Payment of the court costs shall be made a term and condition of the deferred adjudication. Payment of restitution may be made a term and condition of the deferred adjudication: *Provided*, That financial inability to pay court costs and restitution may not be a basis for denying a person deferred adjudication.

§62-11C-10. Standardized risk and needs assessment; annual reviews; day report services.

The Division of Justice and Community Services shall:

(1) Require that staff of day reporting centers and other community corrections programs be trained in and use in each case a standardized risk and needs assessment as adopted by the Supreme Court of Appeals of West Virginia. The results of all standardized risk and needs assessments are confidential;

(2) Annually conduct a validation study of inter-rater reliability and risk cut-off scores by population to ensure that the standardized risk and needs assessment is sufficiently predictive of the risk of reoffending;

(3) Annually review the membership of all community criminal justice boards to ensure appropriate membership;

(4) Evaluate the services, sanctions and programs provided by each community corrections program to ensure that they address criminogenic needs and are evidence based;

(5) Encourage community criminal justice boards to develop programs in addition to or in lieu of day report centers through grants and more focused use of day report services; and

(6) Annually report to the Community Corrections Subcommittee on the results of duties required by this section.

§62-11D-1. Definitions.

As used in this article:

(1) "Certified polygraph analyst" means a person licensed pursuant to the provisions of section five-c, article five, chapter twenty-one of this code and who:

(A) Is certified in post conviction sex offender testing as prescribed by the American Polygraph Association;

(B) Has completed not less than twenty hours of American Polygraph Association-approved sex offender testing training every other calendar year; and

(C) Uses standards approved by the American Polygraph Association for sex offender testing.

(2) "Electronic monitoring" means any one or a combination of the following technologies:

(A) Voice verification;

(B) Radio frequency;

(C) Video display/breath alcohol test;

(D) Global positioning satellite; or

(E) Global positioning satellite - cellular.

(3) "Full-disclosure polygraph" or "sexual history polygraph" means a polygraph examination administered to determine the entire sexual history of the probationer or parolee.

(4) "Maintenance test" means polygraph examination administered to determine the probationer's or parolee's compliance with the terms of supervision and treatment.

(5) "Sexually violent predator" means any person determined by a circuit court of this state to be a sexually violent predator pursuant to the provisions of section two-a, article twelve, chapter fifteen of this code or of a similar provision in another state, federal or military jurisdiction.

§62-11D-2. Polygraph examinations as a condition of supervision for certain sex offenders released on probation, parole or on supervised release.

(a) Notwithstanding any provision of this code to the contrary, any person:

(1) Who has been determined to be a sexually violent predator pursuant to the provisions of section two-a, article twelve, chapter fifteen of this code; or

(2) Who is required to register as a sex offender pursuant to the provisions of article twelve, chapter fifteen of this code and who is ordered by a circuit court or supervising entity to undergo polygraph examination as a condition of probation, parole or supervised release, shall, as a condition of said probation, parole or supervised release, submit to polygraph examinations as prescribed in this section.

(b) Any person required to undergo polygraph examination pursuant to subsection (a) of this section shall, at his or her expense, submit to at least one polygraph examination each year to answer questions relating to his or her compliance with conditions of supervision, including conditions related to treatment. Additional examinations may be required, not to exceed a total of five. The results of any examination are not admissible in evidence and are to be used solely as a risk assessment and treatment tool. Examination results shall be made available to the person under supervision, upon request.

(c) In the event a person required to submit to polygraph examinations as required by the provisions of this section is unable to pay for the polygraph examination or examinations, that person may present an affidavit reflecting the inability to pay for such testing to the circuit court of the county of supervision. If it appears to the satisfaction of the court that such person is in fact financially unable to pay for such testing, the court shall issue an order reflecting such findings and forward such order to the supervising entity. Upon receipt of such order, the supervising entity shall then be responsible for paying for such testing.

(d) Any polygraph examination conducted pursuant to the provisions of this section shall be conducted by a certified polygraph analyst.

(e) In the conduct of polygraph examinations of a sex offender performed pursuant to the provisions of this section, no certified polygraph analyst may:

(1) Conduct more than two full disclosure or sexual history polygraph examinations in a twenty-four hour period;

(2) Disclose any information gained during any full disclosure or sexual history polygraph examination to any law-enforcement agency or other party, other than the supervising entity, without the supervised person's consent, nor shall any information or disclosure be admissible in any court of this state, unless such information disclosed indicates the intention or plan to commit a criminal violation of the laws of this or another state or of the United States in which case such information may be released only to such persons as might

be necessary solely to prevent the commission of such crime;

(3) Conduct more than two maintenance tests in a twenty-four hour period;

(4) Conduct more than one full disclosure or sexual history polygraph examination and more than two maintenance tests in a twenty-four hour period; or

(5) Conduct more than five polygraph examinations of the same sex offender in a calendar year.

(f) No polygraph examination performed pursuant to the provisions this section may be conducted by a person who is a sworn peace officer, within the boundaries of that officer's jurisdiction.

§62-11D-3. Electronic monitoring of certain sex offenders under supervision; tampering with devices; offenses and penalties.

(a) Notwithstanding any provisions of this code to the contrary, any person designated as a sexually violent predator pursuant to the provisions of section two-a, article twelve, chapter fifteen of this code who is on probation, parole or supervised release, shall be subject to electronic monitoring as a condition of probation, parole or supervised release. A person required to register as a sex offender pursuant to the provisions of article twelve, chapter fifteen of this code may, as a condition of probation, parole or supervised release, be subject to electronic monitoring.

(b) Upon being placed on supervision, a person required to undergo electronic monitoring pursuant to the provisions of this section shall be placed at a minimum on radio frequency monitoring with curfews enforced. Following an assessment designed to determine the level and type of electronic monitoring necessary to effectuate the protection of the public, a supervised person may be placed on a system providing a greater or lesser degree of monitoring.

(c) A person subject to the provisions of this section shall be responsible for the cost of the electronic monitoring. In the event a person required to submit to electronic monitoring as required by the provisions of this section is unable to pay for the electronic monitoring, that person may present an affidavit reflecting the inability to pay for such monitoring to the circuit court of the county of supervision. If it appears to the satisfaction of the court that such person is in fact financially unable to pay for such monitoring, the court shall issue an order reflecting such findings and forward said order to the supervising entity. Upon receipt of such order, the supervising entity shall then be responsible for paying for each testing.

(d) The assessment required by the provisions of subsection (b) of this section shall be completed not later than thirty days after the supervised person begins serving probation or parole or supervised release. Under no circumstances may a person of whom electronic monitoring has been mandated as a condition of supervision be on a type of monitoring less effective than voice verification with a curfew.

(e) Any person who intentionally alters, tampers with, damages or destroys any electronic monitoring equipment, with the intent to remove the device or impair its effectiveness, is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than one year nor more than ten years.

§62-11E-1.

Repealed.

Acts, 2015 Reg. Sess., Ch. 53.

§62-11E-2.

Repealed.

Acts, 2015 Reg. Sess., Ch. 53.

§62-11E-3.

Repealed.

Acts, 2015 Reg. Sess., Ch. 53.

§62-11F-1. Applicability.

This article applies to adults charged with one or more misdemeanors or felonies and who are incarcerated in a regional jail prior to adjudication due to their inability to post bond.

§62-11F-2. Establishment of pretrial release programs.

(a) Legislative findings and purpose. -- It is the purpose of pretrial release programs to employ recommendations from the Council of State Government's Justice Center's Analyses and Policy Options to Reduce Spending on Corrections and Reinvest in Strategies to Increase Public Safety, by providing for uniform statewide risk assessment and monitoring of those released prior to trial, facilitating a statewide response to the problem of overcrowded regional jails and costs to county commissions.

(b) Any county, circuit or combination thereof that establishes a pretrial program pursuant to this article shall establish a local community pretrial committee that consists of:

(1) A prosecutor, or his or her designee;

(2) A county commissioner, or his or her designee;

(3) A sheriff, or his or her designee;

(4) An executive director of a community corrections program, or his or her designee;

(5) A chief probation officer, or his or her designee; and

(6) A member of the criminal defense bar.

(c) Pretrial release programs may monitor, supervise and assist defendants released prior to trial.

(d) Nothing in this article should be construed to prohibit a court from requiring a defendant to post a secured bond as a condition of pretrial release.

(e) In addition to funding provided pursuant to subsection (c), section three of this article, pretrial release programs may be funded by appropriations made to the Supreme Court of Appeals for such purpose.

§62-11F-3. Pretrial release program guidelines.

(a) The Supreme Court of Appeals has complete oversight and authority over all pretrial services.

(b) The Supreme Court of Appeals shall establish recommended guidelines for pretrial programs to use when ordering pretrial release for defendants whose pretrial risk assessment indicates that they are an appropriate candidate for pretrial release.

(c) The Community Corrections Subcommittee of the Governor's Committee on Crime, Delinquency and Correction, pursuant to section two, article eleven-c of this chapter, shall approve policy and funding for the development, maintenance and evaluation of pretrial release programs. Any county, circuit or combination thereof that establishes a pretrial program intended to provide pretrial release services shall submit a grant proposal to the Community Corrections Subcommittee of the Governor's Committee on Crime, Delinquency and Correction for review and approval.

§62-11F-4. Pretrial release assessment.

The Supreme Court of Appeals of West Virginia may adopt a standardized pretrial risk assessment for use by pretrial release programs to aid in making pretrial decisions under article one-c of this chapter.

§62-11F-5. Role of pretrial release programs.

A pretrial release program established pursuant to this article shall:

(1) Collect and present the necessary information, present risk assessment and make release recommendations to the court;

(2) Present information to the court relating to the risk defendants may pose in failing to appear in court or of threatening the safety of the community or any other person and, consistent with court policy, develop release recommendations responding to risk;

(3) Develop and provide appropriate and effective supervision for all persons released pending adjudication who are assigned supervision as a condition of release;

(4) Monitor compliance of released defendants with the requirements of assigned release conditions;

(5) Promptly inform the court of all apparent violations of pretrial release conditions or arrests of persons released pending trial, including those directly supervised by pretrial services as well as those released under other forms of conditional release, and recommend appropriate modifications of release conditions;

(6) Coordinate the services of other agencies, individuals or organizations that may serve as custodians for released defendants, and advise the court as to their appropriateness, availability, reliability and capacity relating to pretrial release conditions;

(7) Review the status of detained defendants on an ongoing basis for any changes in eligibility for release options and facilitate their release as soon as feasible and appropriate;

(8) Develop and operate an accurate information management system to support prompt identification, information collections and presentation, risk assessment, release conditions selection, compliance monitoring and detention review functions essential to an effective pretrial release program; and

(9) Remind persons released before trial of their court dates to attempt to facilitate their court appearance.

§62-12-1. Courts having authority to place offenders on probation.

Any circuit court of this state shall have authority as provided in this article to place on probation any person convicted of a crime.

§62-12-2. Eligibility for probation.

(a) All persons who are found guilty of or plead guilty to any felony, the maximum penalty for which is less than life imprisonment, and all persons who are found guilty of or plead guilty to any misdemeanor are eligible for probation, notwithstanding the provisions of §61-11-18 and §61-11-19 of this code: *Provided*, That persons convicted of offenses set forth in §60A-4-409(c), §60A-4-414(b), §60A-4-416(a)(2), and §60A-4-419 are not eligible for probation.

(b) The provisions of subsection (a) of this section to the contrary notwithstanding, any person who commits or attempts to commit a felony with the use, presentment, or brandishing of a firearm is not eligible for probation. Nothing in this section may apply to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented, or brandished a firearm.

(c)(1) The existence of any fact which would make any person ineligible for probation under subsection (b) of this section because of the commission or attempted commission of a felony with the use, presentment, or brandishing of a firearm may not be applicable unless the fact is clearly stated and included in the indictment or presentment by which that person is charged and is either:

(A) Found by the court upon a plea of guilty or nolo contendere;

(B) Found by the jury, if the matter is tried before a jury, upon submitting to the jury a special interrogatory for that purpose; or

(C) Found by the court, if the matter is tried by the court, without a jury.

(2) The amendments to this subsection adopted in the year 1981:

(A) Apply to all applicable offenses occurring on or after August 1 of that year;

(B) Apply with respect to the contents of any indictment or presentment returned on or after August 1 of that year irrespective of when the offense occurred;

(C) Apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to the jury on or after August 1 of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: *Provided*, That the state shall give notice in writing of its intent to seek that finding by the jury or court, as the case may be, which notice shall state with particularity the grounds upon which the finding is sought as fully as such grounds are otherwise required to be stated in an indictment, unless the grounds therefor are alleged in the indictment or presentment upon which the matter is being tried; and

(D) May not apply with respect to cases not affected by the amendment and in those cases the prior provisions of this section shall apply and be construed without reference to the amendment.

Insofar as the amendments relate to mandatory sentences without probation, all matters requiring that sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

(d) For the purpose of this section, the term "firearm" means any instrument which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, gunpowder, or any other similar means.

(e) Any person who has been found guilty of, or pleaded guilty to, a violation of §61-3C-14b, §61-8-12, §61-8A-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-5 of this code may only be eligible for probation after undergoing a physical, mental, and psychiatric or psychological study and diagnosis which shall include an ongoing treatment plan requiring active participation in sexual abuse counseling at a mental health facility or through some other approved program: *Provided*, That nothing disclosed by the person during that study or diagnosis may be made available to any law-enforcement agency or other party without that person's consent, or admissible in any court of this state, unless the information disclosed indicates the intention or plans of the probationer to do harm to any person, animal, institution, or property, in which case the information may be released only to those persons necessary for protection of the person, animal, institution, or property.

Within 90 days of the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, 2006, the Secretary of the Department of Human Services shall propose rules and emergency rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code, establishing qualifications for sex offender treatment programs and counselors based on accepted treatment protocols among licensed mental health professionals.

(f) Any person who has been convicted of a violation of §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, §61-8D-5, §61-8D-6, §61-2-14, §61-8-12, and §61-8-13 of this code, or of a felony violation involving a minor of §61-8-6 or §61-8-7 of this code, or of a similar provision in another jurisdiction, shall register upon release on probation. Any person who has been convicted of an attempt to commit any of the offenses set forth in this subsection shall also be registered upon release on probation.

(g) The probation officer shall within three days of release of the offender send written notice to the State Police of the release of the offender. The notice shall include:

(1) The full name of the person;

(2) The address where the person shall reside;

(3) The person's Social Security number;

(4) A recent photograph of the person;

(5) A brief description of the crime for which the person was convicted;

(6) Fingerprints; and

(7) For any person determined to be a sexually violent predator as defined in §15-12-2a of this code, the notice shall also include:

(A) Identifying factors, including physical characteristics;

(B) A history of the offense; and

(C) Documentation of any treatment received for the mental abnormality or personality disorder.

§62-12-3. Suspension of sentence and release on probation.

Whenever, upon the conviction of any person eligible for probation under the preceding section, it shall appear to the satisfaction of the court that the character of the offender and the circumstances of the case indicate that he is not likely again to commit crime and that the public good does not require that he be fined or imprisoned, the court, upon application or of its own motion, may suspend the imposition or execution of sentence and release the offender on probation for such period and upon such conditions as are provided by this article; but in no case, except as provided by the following section, shall the court have authority to suspend the execution of a sentence after the convicted person has been imprisoned for sixty days under the sentence. Any person released on probation must participate as a condition of probation in the litter control program of the county to the extent directed by the court, unless the court specifically finds that this alternative service would be inappropriate.

§62-12-4. Probation of offenders convicted in courts other than courts of record.

Whenever any person is found guilty of, or pleads guilty to, a crime in a court which is not a court of record, he may, at any time thereafter, file with the court of record to which an appeal would lie, or with the judge thereof in vacation, his petition in writing, together with a transcript of the docket of the court in which he was convicted, requesting that he be placed on probation. Upon the filing of such petition and transcript, said court of record or the judge thereof, shall have power to suspend the execution of the sentence of the lower court and to release the petitioner on probation upon such conditions as to said court or judge may seem fitting.

§62-12-5. Probation officers and assistants.

(a) Each circuit court, subject to the approval of the Supreme Court of Appeals and in accordance with its rules, is authorized to appoint one or more probation officers and clerical assistants.

(b) The appointment of probation officers and clerical assistants shall be in writing and entered on the order book of the court by the judge making such appointment and a copy of the order of appointment shall be delivered to the Administrative Director of the Supreme Court of Appeals. The order of appointment shall state the annual salary, fixed by the judge and approved by the Supreme Court of Appeals, to be paid to the appointed probation officer or clerical assistants.

(c) The salary of probation officers and clerical assistants shall be paid at least twice per month, as the Supreme Court of Appeals by rule may direct, and they shall be reimbursed for all reasonable and necessary expenses actually incurred in the line of duty in the field. The salary and expenses shall be paid by the state from the judicial accounts thereof. The county commission shall provide adequate office space for the probation officer and his or her assistants to be approved by the appointing court. The equipment and supplies as may be needed by the probation officer and his or her assistants shall be provided by the state and the cost thereof shall be charged against the judicial accounts of the state.

(d) A judge may not appoint any probation officer, assistant probation officer, or clerical assistant who is related to him or her either by consanguinity or affinity.

(e) Subject to the approval of the Supreme Court of Appeals and in accordance with its rules, a judge of a circuit court whose circuit comprises more than one county may appoint a probation officer and a clerical assistant in each county of the circuit or may appoint the same persons to serve in these respective positions in two or more counties in the circuit.

(f) Nothing contained in this section alters, modifies, affects, or supersedes the appointment or tenure of any probation officer, medical assistant, or psychiatric assistant appointed by any court under any special act of the Legislature heretofore enacted, and the salary or compensation of those persons shall remain as specified in the most recent amendment of any special act until changed by the court, with approval of the Supreme Court of Appeals, by order entered of record, and any such salary or compensation shall be paid out of the State Treasury.

(g) In order to carry out the supervision responsibilities set forth in §62-26-12 of this code, the Administrative Director of the Supreme Court of Appeals, or his or her designee, in accordance with the court's procedures, may hire multijudicial-circuit probation officers, to be employed through the court's Division of Probation Services. Such officers may also supervise probationers who are on probation for sexual offences with the approval of the administrative director of the Supreme Court of Appeals or his or her designee.

(h) In recognition of the duties of their employment supervising confinement and supervised release, and the inherent arrest powers for violation of the same which constitute law enforcement, state probation officers are determined to be qualified law-enforcement officers as that term is used in 18 U.S.C. § 926B.

(i) Any state probation officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. § 926B if the following criteria are met:

(1) The Supreme Court of Appeals has a written policy authorizing probation officers to carry a concealed firearm for self-defense purposes.

(2) There is in place a requirement that the state probation officers annually qualify in the use of a firearm with standards for qualification which are equal to, or exceed those required of sheriff's deputies by the Law-Enforcement Professional Standards Program;

(3) The Supreme Court of Appeals issues a photographic identification and certification card which identify the state probation officers as qualified law-enforcement employees pursuant to the provisions of §30-29-12 of this code.

(j) Any policy instituted pursuant to this subsection shall include provisions which:

(1) Preclude or remove a person from participation in the concealed firearm program;

(2) Preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and;

(3) Prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defines in §17C-5-2 of this code.

(k) Any state probation officer who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(l) It is the intent of the Legislature in enacting the amendments to this section during the 2022 regular session of the Legislature to authorize state probation officers wishing to do so to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. § 926B.

(m) The privileges authorized by the amendments to this section enacted during the 2022 regular session of the Legislature are wholly within the discretion of the Supreme Court of Appeals.

(n) The Administrative Director of the Supreme Court of Appeals, or his or her designee, may hire field training probation officers to provide uniform training to new and current probation officers statewide. A field training probation officer shall have all the powers granted to a probation officer under this code while performing his or her duties.

§62-12-5a.

Repealed.

Acts, 1975 Reg. Sess., Ch. 126.

§62-12-6. Powers and duties of probation officers.

(a) Each probation officer shall:

(1) Investigate all cases which the court refers to the officer for investigation and shall report in writing on each case;

(2) Conduct a standardized risk and needs assessment, using the instrument adopted by the Supreme Court of Appeals of West Virginia, for any probationer for whom an assessment has not been conducted either prior to placement on probation or by a specialized assessment officer. The results of all standardized risk and needs assessments are confidential;

(3) Supervise the probationer and enforce probation according to assessment and supervision standards adopted by the Supreme Court of Appeals of West Virginia;

(4) Furnish to each person released on probation under the officer's supervision a written statement of the probationer's conditions of probation together with a copy of the rules prescribed by the Supreme Court of Appeals;

(5) Stay informed concerning the conduct and condition of each probationer under the officer's supervision and report on the conduct and condition of each probationer in writing as often as the court requires;

(6) Use all practicable and suitable methods to aid and encourage the probationer to improve his or her conduct and condition;

(7) Perform random drug and alcohol testing on probationers under his or her supervision as directed by the circuit court;

(8) Maintain detailed work records; and

(9) Perform any other duties the court requires.

(b) The probation officer may, with or without an order or warrant, arrest any probationer as provided in section 10 of this article, and arrest any person on supervised release when there is reasonable cause to believe that the person on supervised release has violated a condition of release. A person on supervised release who is arrested shall be brought before the court for a prompt and summary hearing.

(c) Notwithstanding any provision of this code to the contrary:

(1) Any probation officer appointed on or after July 1, 2002, may carry handguns in the course of the officer's official duties after meeting specialized qualifications established by the Governor's Committee on Crime, Delinquency and Correction. The qualifications shall include the successful completion of handgun training, which is comparable to the handgun training provided to law-enforcement officers by the State Police and includes a minimum of

four hours' training in handgun safety.

(2) Probation officers may only carry handguns in the course of their official duties after meeting the specialized qualifications set forth in subdivision (1) of this subsection.

(d) The Supreme Court of Appeals of West Virginia may adopt a standardized risk and needs assessment with risk cut-off scores for use by probation officers, taking into consideration the assessment instrument adopted by the Division of Corrections and Rehabilitation under subsection (h), section 13 of this article and the responsibility of the Division of Justice and Community Services to evaluate the use of the standardized risk and needs assessment. The results of any standardized risk and needs assessment are confidential.

§62-12-7. Pretrial and preliminary investigation; report on prospective probationers.

(a) The Supreme Court of Appeals of West Virginia may adopt a standardized pretrial risk assessment for use by the Regional Jail Authority to assist magistrates and circuit courts in making pretrial decisions under article one-c of this chapter.

(b) Unless otherwise directed by the court, the probation officer shall, in the form adopted by the Supreme Court of Appeals of West Virginia, make a careful investigation of, and a written report with recommendations concerning, any prospective probationer. Insofar as practicable, this report shall include information concerning the offender's court and criminal record, occupation, family background, education, habits and associations, mental and physical condition, the names, relationship, ages and condition of those dependent upon him or her for support and any other facts that may aid the court in determining the propriety and conditions of his or her release on probation. A person convicted of a felony or of any offense described in article eight-b or eight-d, chapter sixty-one of this code against a minor child may not be released on probation until this report has been presented to and considered by the court. The court may request a report concerning any person convicted of a misdemeanor. The presentence report of any person convicted of an offense, described in said articles or section twelve, article eight of said chapter, may include a statement from a therapist, psychologist or physician who is providing treatment to the child. A copy of all reports shall be filed with the Parole Board.

§62-12-7a. Presentence diagnosis and classification; power of court; custody of convicted person; provision for presentence reports; penalty for escape.

Notwithstanding any other provision of law, when any person has been found guilty of, or pleads guilty to, a felony, or any offense described in article eight-d or eight-b, chapter sixty-one of this code, against a minor child, the court may, prior to pronouncing of sentence, direct that the person be delivered into the custody of the commissioner of corrections, for the purpose of diagnosis and classification for a period not to exceed sixty days: Provided, That the court shall require that a presentence report be completed by the probation officer assigned to that person and be made available to the commissioner of corrections prior to delivery of the person to a statutorily approved diagnosis and classification unit of the Division of Corrections. While at the diagnosis and classification unit the person shall undergo examination, diagnosis and classification and shall then be remanded and delivered to the custody of the sheriff of the county wherein he or she was found guilty or entered such plea. Within ten days following the termination of the examination, diagnosis and classification, the commissioner of corrections shall make or cause to be made a report to the court wherein the person was found guilty, or entered a plea of guilty, containing the results, findings, conclusions and recommendations of the commissioner with respect to such person.

Whenever a person is remanded into the custody of the commissioner of corrections pursuant to this section, the person shall be given credit on any sentence subsequently imposed by the court equal to the time spent in such custody.

§62-12-8. Record of order as to release on probation.

Orders granting or refusing release on probation shall contain a brief statement by the court of the reasons for its action and shall be entered of record. A copy of all orders granting release on probation, of all orders refusing such release in felony cases, and of all orders revoking any previous order shall be sent by the clerk of the court to the board of probation and parole within five days after the making of the order.

§62-12-9. Conditions of release on probation.

(a) Release on probation is conditioned upon the following:

(1) That the probationer may not, during the term of his or her probation, violate any criminal law of this or any other state or of the United States;

(2) That the probationer may not, during the term of his or her probation, leave the state without the consent of the court which placed him or her on probation;

(3) That the probationer complies with the conditions prescribed by the court for his or her supervision by the probation officer;

(4) That in every case in which the probationer has been convicted of an offense set forth in §61-3C-14b, §61-8-12, §61-8A-1 *et seq*., §61-8B-1 *et seq*., §61-8C-1 *et seq*., and §61-8D-1 *et seq*. of this code against a child, the probationer may not live in the same residence as any minor child, nor exercise visitation with any minor child, and may have no contact with the victim of the offense: *Provided*, That the probationer may petition the court of the circuit in which he or she was convicted for a modification of this term and condition of his or her probation and the burden rests upon the probationer to demonstrate that a modification is in the best interest of the child;

(5) That the probationer pay a fee, not to exceed $20 per month, to defray costs of supervision: *Provided*, That the court conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay the fee without undue hardship. All moneys collected as fees from probationers pursuant to this subdivision shall be deposited with the circuit clerk who shall, on a monthly basis, remit the moneys collected to the State Treasurer for deposit in the state General Revenue Fund; and

(6) That the probationer is required to pay the fee described in §62-11C-4 of this code: *Provided*, That the court conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay the fee without undue hardship.

(b) In addition, the court may impose, subject to modification at any time, any other conditions which it may determine advisable, including, but not limited to, any of the following:

(1) That the probationer make restitution or reparation, in whole or in part, immediately or within the period of probation, to any party injured by the crime for which he or she has been convicted: *Provided*, That the court conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay restitution without undue hardship;

(2) That the probationer pays any fine assessed and the costs of the proceeding in installments directed by the court: *Provided*, That the court conduct a hearing prior to imposition of probation and makes a determination on the record that the offender is able to

pay the costs without undue hardship;

(3) That the probationer makes contributions from his or her earnings, in sums directed by the court, for the support of his or her dependents; and

(4) That the probationer, in the discretion of the court, is required to serve a period of confinement in the jail of the county in which he or she was convicted for a period not to exceed one third of the minimum sentence established by law or one third of the least possible period of confinement in an indeterminate sentence, but in no case may the period of confinement exceed six consecutive months. The court may sentence the defendant within the six-month period to intermittent periods of confinement including, but not limited to, weekends or holidays and may grant to the defendant intermittent periods of release in order that he or she may work at his or her employment or for other reasons or purposes as the court may determine appropriate: *Provided*, That the provisions of §62-11A-1 *et seq*. of this code do not apply to intermittent periods of confinement and release except to the extent directed by the court. If a period of confinement is required as a condition of probation, the court shall make special findings that other conditions of probation are inadequate and that a period of confinement is necessary.

(c) Circuit courts may impose, as a condition of probation, participation in a day report center.

(1) To be eligible, the probationer shall be identified as moderate to high risk of reoffending and moderate to high criminogenic need, as determined by the standardized risk and needs assessment adopted by the Supreme Court of Appeals of West Virginia under §62-12-6(d) of this code, and applied by a probation officer or day report staff. In eligible cases, circuit courts may impose a term of up to one year: *Provided*, That notwithstanding the results of the standardized risk and needs assessment, a judge may impose, as a term of probation, participation in a day report center program upon making specific written findings of fact as to the reason for departing from the requirements of this subdivision.

(2) The day report center staff shall determine which services a person receives based on the results of the standardized risk and needs assessment and taking into consideration the other conditions of probation set by the court.

(d) For the purposes of this article, "day report center" means a court-operated or court-approved facility where persons ordered to serve a sentence in this type of facility are required to report under the terms and conditions set by the court for purposes which include, but are not limited to, counseling, employment training, alcohol or drug testing, or other medical testing.

§62-12-10. Violation of probation.

(a) If at any time during the period of probation there shall be reasonable cause to believe that the probationer has violated any of the conditions of his or her probation, the probation officer may arrest him or her with or without an order or warrant, or the court which placed him or her on probation, or the judge thereof in vacation, may issue an order for his or her arrest, whereupon he or she shall be brought before the court, or the judge thereof in vacation, for a prompt and summary hearing.

(1) If the court or judge finds reasonable cause exists to believe that the probationer:

(A) Absconded supervision;

(B) Engaged in new criminal conduct other than a minor traffic violation or simple possession of a controlled substance; or

(C) Violated a special condition of probation designed either to protect the public or a victim; the court or judge may revoke the suspension of imposition or execution of sentence, impose sentence if none has been imposed and order that sentence be executed.

(2) If the judge finds that reasonable cause exists to believe that the probationer violated any condition of supervision other than the conditions of probation set forth in subdivision (1) of this subsection then, for the first violation, the judge shall impose a period of confinement up to sixty days or, for the second violation, a period of confinement up to one hundred twenty days. For the third violation, the judge may revoke the suspension of imposition or execution of sentence, impose sentence if none has been imposed and order that sentence be executed, with credit for time spent in confinement under this section.

(3) In computing the period for which the offender is to be confined, the time between his or her release on probation and his or her arrest may not be taken to be any part of the term of his or her sentence.

(b) A probationer confined for a first or second violation pursuant to subdivision (2), subsection (a) of this section may be confined in jail, and the costs of confining felony probationers shall be paid out of funds appropriated for the Division of Corrections. Whenever the court orders the incarceration of a probationer pursuant to the provisions of subdivision (2), subsection (a) of this section, a circuit clerk shall provide a copy of the order of confinement within five days to the Commissioner of Corrections.

(c) If, despite a violation of the conditions of probation, the court or judge is of the opinion that the interests of justice do not require that the probationer serve his or her sentence or a period of confinement, the judge may, except when the violation was the commission of a felony, again release him or her on probation: Provided, That a judge may otherwise depart from the sentence limitations set forth in subdivision (2), subsection (a) of this section upon making specific written findings of fact supporting the basis for the departure.

§62-12-11. Probation period.

The period of probation together with any extension thereof shall not exceed seven years. Upon the termination of the probation period, the probation officer shall report to the court the conduct of the probationer during the period of his or her probation, and the court may thereupon discharge the probationer or extend the probation period. Whenever, before the end of the probation period, the probationer has satisfactorily complied with all the conditions of his or her probation and it appears to the court that it is no longer necessary to continue his or her supervision, the court may discharge him or her. All orders extending the probation period and all orders of discharge shall be entered in the records of the court, and a copy of all such orders shall be sent by the clerk of the court to the board within five days after the making of the order.

§62-12-12. Parole Board generally.

(a) The West Virginia Parole Board is continued as part of the Division of Corrections and Rehabilitation. The board shall consist of nine members, each of whom shall have been a resident of this state for at least five consecutive years prior to his or her appointment. No more than five of the board members may at any one time belong to the same political party, except as provided in subsection (b) of this section. The board shall be appointed by the Governor, by and with the advice and consent of the Senate and shall serve at the will and pleasure of the Governor.

(b) The Governor shall appoint one of the nine members to serve as chairperson at the Governor's will and pleasure. In addition to all other powers, duties, and responsibilities granted and assigned to the chairperson by law and rule, the chairperson has the following powers and duties:

(1) To provide for the management of facilities and personnel of the board;

(2) To supervise the administration and operation of the board;

(3) To delegate the powers and duties of his or her office to the vice chairperson or other members of the board, who shall act under the direction of the chairperson and for whose acts he or she is responsible: *Provided*, That if the position of chairperson becomes vacant by death, resignation, or otherwise, the vice chairperson shall assume all the powers and duties of the chairperson until such time as a new chairperson is appointed pursuant to the provisions of this subsection;

(4) To employ one full-time administrative employee, who shall be a classified exempt; and

(5) To exercise all other powers and perform all other duties necessary and proper in carrying out his or her responsibilities as chairperson.

(c) The board, from its membership, shall elect a vice chairperson, at least once every year, to serve as chair in the absence of a chairperson. In the absence of or at the direction of the chairperson, the vice chairperson may exercise the powers and duties of the chairperson. The vice chairperson shall, while performing the duties and responsibilities of the chairperson, have all of the statutorily authorized power and duties of the chairperson.

(d) Members of the board shall have at least an undergraduate degree from an accredited college or university or at least five years of actual experience in the fields of corrections, law enforcement, sociology, law, education, psychology, social work, or medicine, or a combination thereof, and shall be otherwise competent to perform the duties of his or her office: *Provided*, That at least three members initially appointed after July 1, 2021, shall have five or more years experience in the fields of mental health, social work, or inmate reentry services. All members currently serving on the board shall continue the terms they are currently serving, unless otherwise removed. The members shall be appointed for

overlapping terms of six years. Members are eligible for reappointment. The members of the board shall devote their full time and attention to their board duties.

(e) The Governor may, if he or she is informed that a vacancy is imminent, appoint a member to fill the imminent vacancy prior to it becoming vacant: *Provided*, That the new member may be appointed no more than 30 days prior to the vacancy occurring and only for purposes of training. He or she may not assume the powers and duties of the position until the vacancy has actually occurred.

(f) The Governor may appoint no more than five persons to a list of substitute board members. Substitute board members shall meet the qualifications set forth in subsection (d) of this section. The persons on the list shall be used in a rotating fashion. If a full-time board member is unable to serve, a substitute board member may serve in his or her place. These substitute board members shall have the same powers and duties of the fulltime board members while acting as a substitute and shall serve at the will and pleasure of the Governor. These members shall be reimbursed for expenses and paid a per diem rate set by the secretary.

(g) The Division of Corrections and Rehabilitation shall provide administrative and other services to the board as the board requires. Expenses of the board shall be included within the annual budget of the Division of Corrections and Rehabilitation: *Provided*, That the salaries of the members appointed pursuant to subsection (b) of this section are to be included in a separate budget for the Parole Board.

(h) Notwithstanding any provision of this code to the contrary, meetings of the parole board are not subject to the provisions of §6-9A-1 *et seq*. of this code: *Provided*, That hearings before the parole board shall be open to the public.

§62-12-12a. Parole board panels.

(a) The board shall sit in panels of three members for the purpose of conducting hearings and making determinations concerning the release of any inmate on parole, conducting hearings and making determinations regarding the revocation of parole, considering any eligible parolee for release from further supervision and discharge from parole, conducting parole interviews and conducting any other hearing provided for in this article. Membership on each panel shall be appointed on a rotating basis by the chairperson of the board. Two members of each panel shall constitute a quorum for the transaction of official business.

(b) When the board sits in panels as herein authorized, each panel shall act in the same manner and under the same authority as the full board. All authority, duties, powers and responsibilities of the board on any matter brought before the panel for hearing shall be exercised by the panel as though heard and decided by the full board. Decisions of each panel shall constitute a decision of the board. All procedures of the board relating to the conduct of hearings shall apply to hearings before the panels of the board.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

(a) The Parole Board, whenever it is of the opinion that the best interests of the state and of the inmate will be served, and subject to the limitations provided in this section, shall release any inmate on parole for terms and upon conditions provided by this article.

(b) Any inmate of a state correctional institution is eligible for parole if he or she:

(1) (A) Has served the minimum term of his or her indeterminate sentence or has served one fourth of his or her definite term sentence, as the case may be; or

(B) He or she has applied for and been accepted by the Commissioner of Corrections and Rehabilitation into an accelerated parole program. To be eligible to participate in an accelerated parole program, the commissioner must determine that the inmate:

(i) Does not have a prior criminal conviction for a felony crime of violence against the person, a felony offense involving the use of a firearm, or a felony offense where the victim was a minor child;

(ii) Is not serving a sentence for a crime of violence against the person, or more than one felony for a controlled substance offense for which the inmate is serving a consecutive sentence, a felony offense involving the use of a firearm, or a felony offense where the victim was a minor child; and

(iii) Has successfully completed a rehabilitation treatment program created with the assistance of a standardized risk and needs assessment.

(C) Notwithstanding any provision of this code to the contrary, any inmate who committed, or attempted to commit, a felony with the use, presentment, or brandishing of a firearm is not eligible for parole prior to serving a minimum of three years of his or her sentence or the maximum sentence imposed by the court, whichever is less: *Provided*, That any inmate who committed, or attempted to commit, any violation of §61-2-12 of this code, with the use, presentment, or brandishing of a firearm, is not eligible for parole prior to serving a minimum of five years of his or her sentence or one third of his or her definite term sentence, whichever is greater. Nothing in this paragraph applies to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented, or brandished a firearm. An inmate is not ineligible for parole under the provisions of this paragraph because of the commission or attempted commission of a felony with the use, presentment, or brandishing of a firearm unless that fact is clearly stated and included in the indictment or presentment by which the person was charged and was either: (i) Found guilty by the court at the time of trial upon a plea of guilty or nolo contendere; (ii) found guilty by the jury upon submitting to the jury a special interrogatory for such purpose if the matter was tried before a jury; or (iii)

found guilty by the court if the matter was tried by the court without a jury.

(D) The amendments to this subsection adopted in the year 1981:

(i) Apply to all applicable offenses occurring on or after August 1 of that year;

(ii) Apply with respect to the contents of any indictment or presentment returned on or after August 1 of that year irrespective of when the offense occurred;

(iii) Apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to the jury on or after August 1 of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: *Provided*, That the state gives notice in writing of its intent to seek such finding by the jury or court, as the case may be. The notice shall state with particularity the grounds upon which the finding will be sought as fully as the grounds are otherwise required to be stated in an indictment, unless the grounds upon which the finding will be sought are alleged in the indictment or presentment upon which the matter is being tried;

(iv) Does not apply with respect to cases not affected by the amendments and in those cases the prior provisions of this section apply and are construed without reference to the amendments; and

(v) Insofar as the amendments relate to mandatory sentences restricting the eligibility for parole, all matters requiring a mandatory sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

(E) As used in this section, "felony crime of violence against the person" means felony offenses set forth in §61-2-1 *et seq*., §61-3E-1 *et seq*., §61-8B-1 *et seq*., or §61-8D-1 *et seq*. of this code.

(F) As used in this section, "felony offense where the victim was a minor child" means any felony crime of violence against the person and any felony violation set forth in §61-8-1 *et seq*., §61-8A-1 *et seq*., §61-8C-1 *et seq*., or §61-8D-1 *et seq*. of this code.

(G) For the purpose of this section, the term "firearm" means any instrument which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, gunpowder, or any other similar means;

(2) Is not in punitive segregation or administrative segregation as a result of disciplinary action;

(3) Has prepared and submitted to the Parole Board a written parole release plan setting forth proposed plans for his or her place of residence, employment and, if appropriate, his or her plans regarding education and post-release counseling and treatment which has been approved by the Division of Corrections and Rehabilitation: *Provided*, That an inmate's application for parole may be considered by the board without the prior submission of a

home plan, but the inmate shall have a home plan approved by the division prior to his or her release on parole. The Commissioner of the Division of Corrections and Rehabilitation, or his or her designee, shall review and investigate the plan and provide findings to the board as to the suitability of the plan: *Provided*, *however*, That in cases in which there is a mandatory 30-day notification period required prior to the release of the inmate, pursuant to §62-12-23 of this code, the board may conduct an initial interview and deny parole without requiring the development of a plan. In the event the board believes parole should be granted, it may defer a final decision pending completion of an investigation and receipt of the commissioner's findings. Upon receipt of the plan, together with the investigation and findings, the board, through a panel, shall make a final decision regarding the granting or denial of parole;

(4) Has satisfied the board that if released on parole he or she will not constitute a danger to the community; and

(5) Has successfully completed any individually required rehabilitative and educational programs, as determined by the division, while incarcerated: *Provided*, That, effective September 1, 2021, any inmate who satisfies all other parole eligibility requirements but is unable, through no fault of the inmate, to complete his or her required rehabilitative and educational programs while incarcerated, which are eligible to be taken while on parole, may be granted parole with the completion of such specified programs outside of the correctional institutions being a special condition of that person's parole term: *Provided*, *however*, That the Parole Board may consider whether completion of the inmate's outstanding amount of such programming would interfere with his or her successful reintegration into society.

(c) Except in the case of an inmate serving a life sentence, a person who has been previously twice convicted of a felony may not be released on parole until he or she has served the minimum term provided by law for the crime for which he or she was convicted. An inmate sentenced for life may not be paroled until he or she has served 10 years, and an inmate sentenced for life who has been previously twice convicted of a felony may not be paroled until he or she has served 15 years: *Provided*, That an inmate convicted of first degree murder for an offense committed on or after June 10, 1994, is not eligible for parole until he or she has served 15 years.

(d) In the case of an inmate sentenced to a state correctional facility regardless of the inmate's place of detention or incarceration, the Parole Board, as soon as that inmate becomes eligible, shall consider the advisability of his or her release on parole.

(e) If, upon consideration, parole is denied, the board shall promptly notify the inmate of the denial. The board shall, at the time of denial, notify the inmate of the month and year he or she may apply for reconsideration and review. The board shall at least once a year reconsider and review the case of every inmate who was denied parole and who is still eligible: *Provided*, That the board may reconsider and review parole eligibility any time within three years following the denial of parole of an inmate serving a life sentence with the

possibility of parole.

(f) Any inmate in the custody of the commissioner for service of a sentence who reaches parole eligibility is entitled to a timely parole hearing without regard to the location in which he or she is housed.

(g) The board shall, with the approval of the Governor, adopt rules governing the procedure in the granting of parole. No provision of this article and none of the rules adopted under this article are intended or may be construed to contravene, limit, or otherwise interfere with or affect the authority of the Governor to grant pardons and reprieves, commute sentences, remit fines, or otherwise exercise his or her constitutional powers of executive clemency.

(h) (1) The Division of Corrections and Rehabilitation shall promulgate policies and procedures for developing a rehabilitation treatment plan created with the assistance of a standardized risk and needs assessment. The policies and procedures shall provide for, at a minimum, screening and selecting inmates for rehabilitation treatment and development, using standardized risk and needs assessment and substance abuse assessment tools, and prioritizing the use of residential substance abuse treatment resources based on the results of the standardized risk and needs assessment and a substance abuse assessment. The results of all standardized risk and needs assessments and substance abuse assessments are confidential.

(2) An inmate shall not be paroled under paragraph (B), subdivision (1), subsection (b) of this section solely due to having successfully completed a rehabilitation treatment plan, but completion of all the requirements of a rehabilitation treatment plan along with compliance with the requirements of subsection (b) of this section creates a rebuttable presumption that parole is appropriate. The presumption created by this subdivision may be rebutted by a Parole Board finding that, according to the standardized risk and needs assessment, at the time parole release is sought the inmate still constitutes a reasonable risk to the safety or property of other persons if released. Nothing in subsection (b) of this section or in this subsection may be construed to create a right to parole.

(i) Notwithstanding the provisions of subsection (b) of this section, the Parole Board may grant or deny parole to an inmate against whom a detainer is lodged by a jurisdiction other than West Virginia for service of a sentence of incarceration, upon a written request for parole from the inmate. A denial of parole under this subsection precludes consideration for parole for a period of one year or until the provisions of subsection (b) of this section are applicable.

(j) If an inmate is otherwise eligible for parole pursuant to subsection (b) of this section, and has completed the rehabilitation treatment program required under subdivision (1), subsection (h) of this section, the Parole Board may not require the inmate to participate in an additional program, but may determine that the inmate must complete an assigned task or tasks prior to actual release on parole. The board may grant parole contingently, effective

upon successful completion of the assigned task or tasks, without the need for a further hearing.

(k) (1) The Division of Corrections and Rehabilitation shall supervise all probationers and parolees whose supervision may have been undertaken by this state by reason of any interstate compact entered into pursuant to the Uniform Act for Out-of-State Parolee Supervision.

(2) The Division of Corrections and Rehabilitation shall provide supervision, treatment/recovery, and support services for all persons released to mandatory supervision under §15A-4-17 of this code.

(l) (1) When considering an inmate of a state correctional facility for release on parole, the Parole Board panel considering the parole shall have before it an authentic copy of, or report on, the inmate's current criminal record as provided through the West Virginia State Police, the United States Department of Justice, or any other reliable criminal information sources and written reports of the superintendent of the state correctional institution to which the inmate is sentenced:

(A) On the inmate's conduct record while in custody, including a detailed statement showing any and all infractions of disciplinary rules by the inmate and the nature and extent of discipline administered for the infractions;

(B) On the inmate's industrial record while in custody which shall include: The nature of his or her work, occupation or education, the average number of hours per day he or she has been employed or in class while in custody and a recommendation as to the nature and kinds of employment which he or she is best fitted to perform and in which the inmate is most likely to succeed when he or she leaves the state correctional institution; and

(C) On any physical, mental, psychological, or psychiatric examinations of the inmate.

(2) The Parole Board panel considering the parole may waive the requirement of any report when not available or not applicable as to any inmate considered for parole but, in every case, shall enter in its record its reason for the waiver: *Provided*, That in the case of an inmate who is incarcerated because the inmate has been found guilty of, or has pleaded guilty to, a felony under the provisions of §61-8-12 of this code or under the provisions of §61-8B-1 *et seq*. or §61-8C-1 *et seq*. of this code, the Parole Board panel may not waive the report required by this subsection. The report shall include a study and diagnosis of the inmate, including an on-going treatment plan requiring active participation in sexual abuse counseling at an approved mental health facility or through some other approved program: *Provided*, *however*, That nothing disclosed by the inmate during the study or diagnosis may be made available to any law-enforcement agency, or other party without that inmate's consent, or admissible in any court of this state, unless the information disclosed indicates the intention or plans of the parolee to do harm to any person, animal, institution, or to property. Progress reports of outpatient treatment are to be made at least every six months

to the parole officer supervising the parolee. In addition, in such cases, the Parole Board shall inform the prosecuting attorney of the county in which the person was convicted of the parole hearing and shall request that the prosecuting attorney inform the Parole Board of the circumstances surrounding a conviction or plea of guilty, plea bargaining, and other background information that might be useful in its deliberations.

(m) Before releasing any inmate on parole, the Parole Board shall arrange for the inmate to appear in person before a Parole Board panel and the panel may examine and interrogate him or her on any matters pertaining to his or her parole, including reports before the Parole Board made pursuant to the provisions of this section: *Provided*, That an inmate may appear by video teleconference if the members of the Parole Board panel conducting the examination are able to contemporaneously see the inmate and hear all of his or her remarks and if the inmate is able to contemporaneously see each of the members of the panel conducting the examination and hear all of the members' remarks: *Provided*, *however*, That the requirement that an inmate personally appear may be waived where a physician authorized to do so by the Commissioner of the Division of Corrections and Rehabilitation certifies that the inmate, due to a medical condition or disease, is too debilitated, either physically or cognitively, to appear. The panel shall reach its own written conclusions as to the desirability of releasing the inmate on parole and the majority of the panel considering the release must concur in the decision. The superintendent shall furnish all necessary assistance and cooperate to the fullest extent with the Parole Board. All information, records, and reports received by the Parole Board shall be kept on permanent file.

(n) The Parole Board and its designated agents are at all times to have access to inmates imprisoned in any state correctional facility or in any jail in this state and may obtain any information or aid necessary to the performance of its duties from other departments and agencies of the state or from any political subdivision of the state.

(o) The Parole Board shall, if requested by the Governor, investigate and consider all applications for pardon, reprieve, or commutation and shall make recommendation on the applications to the Governor.

(p) Prior to making a recommendation for pardon, reprieve or commutation, the board shall notify the sentencing judge and prosecuting attorney at least 10 days before the recommendation.

(q) A parolee shall participate as a condition of parole in the litter control program of the county to which he or she is released to the extent directed by the Parole Board, unless the board specifically finds that this alternative service would be inappropriate.

(r) The commissioner shall develop, maintain, and make publicly available a general list of rehabilitative and educational programs available outside of the correctional institutions which an inmate may be required to complete as a special condition of parole pursuant to subdivision (5) of subsection (b) of this section, and the manner and method in which such programs shall be completed by the parolee.

§62-12-13a. Eligibility date for parole.

When the prisoner has received an indeterminate sentence, the minimum sentence shall be considered as an eligibility date for parole consideration but does not confer in the prisoner the right to be released as of that date.

§62-12-13b. Special parole considerations for persons convicted as juveniles.

(a) When a person who is serving a sentence imposed as the result of an offense or offenses committed when he or she was less than eighteen years of age becomes eligible for parole pursuant to applicable provisions of this code, including, but not limited to, section twenty-three, article eleven, chapter sixty-one thereof, the parole board shall ensure that the procedures governing its consideration of the person's application for parole ensure that he or she is provided a meaningful opportunity to obtain release and shall adopt rules and guidelines to do so that are consistent with existing case law.

(b) During a parole hearing involving a person described in subsection (a) of this section, in addition to other factors required by law to be considered by the parole board, the parole board shall take into consideration the diminished culpability of juveniles as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner during incarceration. The board shall also consider the following:

(1) A review of educational and court documents;

(2) Participation in available rehabilitative and educational programs while in prison;

(3) Age at the time of the offense;

(4) Immaturity at the time of the offense;

(5) Home and community environment at the time of the offense;

(6) Efforts made toward rehabilitation;

(7) Evidence of remorse; and

(8) Any other factors or circumstances the board considers relevant.

§62-12-13c. Authority of commissioner to establish a nonviolent offense parole program.

(a) The commissioner may establish a nonviolent offense parole program for any inmate of a state correctional facility in which an inmate may be paroled without action of the Parole Board based upon objective standards as set forth in this section, to commence on July 1, 2021.

(b) Notwithstanding any provision of this code to the contrary, any inmate of a state correctional facility is eligible for parole under the nonviolent offense parole program if:

(1) He or she has served at least the minimum term of his or her sentence and is eligible for parole as determined by the parole board; and

(2) He or she qualifies for the nonviolent offense parole program as authorized by this section.

(c) To qualify for the nonviolent offense parole program, the commissioner must determine that the inmate:

(1) Is not serving a sentence for a crime of violence against the person, crime of violence against an animal, or felony for a controlled substance offense which involves actual or threatened violence to a person, a felony offense involving the use of a firearm, or a felony offense where the victim was a minor child: *Provided*, That an inmate is ineligible to participate in the nonviolent offense parole program if the sentence from which parole is being considered is aggregated, concurrently or consecutively, with an offense determined disqualifying under this subdivision.

(2) Has successfully completed an individualized rehabilitation treatment program as determined by the division;

(3) Has not previously been released on parole pursuant to this section from the same sentence; and

(4) Has otherwise satisfied the requirements for parole eligibility set forth in §62-12-13 of this code.

(d) Any person released under the nonviolent offense parole program is subject to all conditions of release and sanctions for violations applicable to persons released on parole by the Parole Board, and all parole revocations of persons granted parole pursuant to this section shall be heard in accordance with the provisions of §62-12-19 of this code.

(e) The nonviolent offense parole program authorized by subsection (a) of this section requires no action by the Parole Board as to the release decision if the inmate qualifies for the program and has successfully completed his or her rehabilitation treatment program as determined by the commissioner.

(f) The commissioner shall develop a policy directive setting forth the processes and procedures to determine successful completion of the rehabilitation treatment program and to provide notice to the inmate. If the inmate fails to successfully complete his or her rehabilitation treatment program, his or her parole shall be determined in accordance with the provisions of §62-12-13 of this code. An inmate who has been denied parole pursuant to the provisions of §62-12-13 of this code and who thereafter successfully completes his or her rehabilitation treatment program prior to his or her next parole review is eligible for release under the nonviolent offense parole program within a reasonable time after he or she has successfully completed the program as determined by the commissioner, provided the inmate remains qualified for release under the nonviolent offense parole program.

§62-12-14

Repealed

Acts, 2018 Reg. Sess., Ch. 107.

§62-12-14a

Repealed

Acts, 2018 Reg. Sess., Ch. 107.

§62-12-15

Repealed

Acts, 2018 Reg. Sess., Ch. 107.

§62-12-16.

Repealed.

Acts, 1955 Reg. Sess., Ch. 42.

§62-12-17. Conditions of release on probation and parole.

(a) Release and supervision on parole of any person, including the supervision by the Division of Corrections of any person paroled by any other state or by the federal government, shall be upon the following conditions:

(1) That the parolee may not, during the period of his or her parole, violate any criminal law of this or any other state or of the United States;

(2) That the parolee may not, during the period of his or her parole, leave the state without the consent of the Division of Corrections;

(3) That the parolee complies with the rules prescribed by the Division of Corrections for his or her supervision by the parole officer;

(4) That in every case in which the parolee for a conviction is seeking parole from an offense against a child, defined in section twelve, article eight, chapter sixty-one of this code, or article eight-b or eight-d of said chapter, or similar convictions from other jurisdictions where the parolee is returning or attempting to return to this state pursuant to the provisions of article six, chapter twenty-eight of this code, the parolee may not live in the same residence as any minor child nor exercise visitation with any minor child nor may he or she have any contact with the victim of the offense; and

(5) That the parolee, and all federal or foreign state probationers and parolees whose supervision may have been undertaken by this state, pay a fee, based on his or her ability to pay, not to exceed $40 per month to defray the costs of supervision.

(b) The Commissioner of Corrections shall keep a record of all actions taken and account for moneys received. All moneys shall be deposited in a special account in the State Treasury to be known as the Parolee's Supervision Fee Fund. Expenditures from the fund shall be for the purposes of providing the parole supervision required by the provisions of this code and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(c) The Division of Corrections shall consider the following factors in determining whether a parolee or probationer is financially able to pay the fee:

(1) Current income prospects for the parolee or probationer, taking into account seasonal variations in income;

(2) Liquid assets of the parolee or probationer, assets of the parolee or probationer that may provide collateral to obtain funds and assets of the parolee or probationer that may be

liquidated to provide funds to pay the fee;

(3) Fixed debts and obligations of the parolee or probationer, including federal, state and local taxes and medical expenses;

(4) Child care, transportation and other reasonably necessary expenses of the parolee or probationer related to employment; and

(5) The reasonably foreseeable consequences for the parolee or probationer if a waiver of, or reduction in, the fee is denied.

(d) In addition, the Division of Corrections may impose, subject to modification at any time, any other conditions which the division considers advisable.

(e) The Division of Corrections may order substance abuse treatment as a condition or as a modification of parole, only if the standardized risk and needs assessment indicates the offender has a high risk for reoffending and a need for substance abuse treatment.

(f) The Division of Corrections may impose, as an initial condition of parole, a term of reporting to a day report center or other community corrections program only if the standardized risk and needs assessment indicates a moderate to high risk of reoffending and moderate to high criminogenic need. Any parolee required to report to a day report center or other community corrections program is subject to all the rules and regulations of the center or program and may be removed at the discretion of the center's or program's director. The Commissioner of Corrections shall enter into a master agreement with the Division of Justice and Community Services to provide reimbursement to counties for the use of community corrections programs by eligible parolees. Any placement by the Division of Corrections of a parolee in a day report center or other community corrections program may only be done with the center or program director's consent and the parolee is subject to all of the rules and regulations of the center or program and may be removed by the director.

§62-12-18. Period of parole; discharge.

The period of parole shall be the maximum of any sentence, less deductions for good conduct and work as provided by law, for which the paroled inmate, at the time of release, was subject to imprisonment under his or her definite or indeterminate sentence, as the case may be: *Provided*, That at any time after a parolee has been on parole for a minimum of one-year from the date of his or her release, the Commissioner of the Division of Corrections and Rehabilitation, or his or her designee, may submit a request to the chairperson of the parole board for a parolee's early discharge from parole along with appropriate documentation as to the parolee's good conduct while on parole. The chairperson may, after a review of the request and submission from the commissioner, or his or her designee, when in his or her judgment, the ends of parole have been attained and the best interests of the state and the parolee will be served by the early discharge, release the parolee from further supervision and discharge him or her from parole: *Provided, however*, That an inmate sentenced to serve a life term of imprisonment and released on parole may not be discharged from supervision and parole in a period less than five years from the date of his or her release on parole.

A parolee who has violated the terms of his or her release on parole by confession to, or being convicted of, in any state of the United States, the District of Columbia, or the territorial possessions of the United States, the crime of treason, murder, aggravated robbery, first degree sexual assault, second degree sexual assault, a sexual offense against a minor, incest, or offenses with the same essential elements if known by other terms in other jurisdictions may not be discharged from parole. A parolee serving a sentence in any correctional facility of another state or the United States may, unless incarcerated for one of the above enumerated crimes, be discharged from parole while serving his or her sentence in a correctional facility or be continued on parole or returned to West Virginia as a parole violator, in the discretion of the parole board.

§62-12-19. Violation of parole.

(a) If at any time during the period of parole there is reasonable cause to believe that the parolee has violated any of the conditions of his or her release on parole, the parole officer may arrest him or her with or without an order or warrant, or the Commissioner of Corrections may issue a written order or warrant for his or her arrest. The written order or warrant is sufficient for his or her arrest by any officer charged with the duty of executing an ordinary criminal process. The commissioner's written order or warrant delivered to the sheriff against the parolee shall be a command to keep custody of the parolee for the jurisdiction of the Division of Corrections. During the period of custody, the parolee may be admitted to bail by the court before which the parolee was sentenced. If the parolee is not released on a bond, the costs of confining the paroled prisoner shall be paid out of the funds appropriated for the Division of Corrections.

(1) If reasonable cause is found to exist that a parolee has violated a term or terms of his or her release on parole that does not constitute:

(A) Absconding supervision;

(B) New criminal conduct other than a minor traffic violation or simple possession of a controlled substance; or

(C) Violation of a special condition of parole designed either to protect the public or a victim; the parole officer may, after consultation with and written approval by the director of parole services, for the first violation, require the parolee to serve a period of confinement up to sixty days or, for the second violation, a period of confinement up to one hundred twenty days: Provided, That the Division of Corrections shall notify the Parole Board when a parolee is serving such a term of confinement and the Parole Board may deny further confinement. A parolee serving a term of confinement in the first or second instance may be confined in jail or any other facility designated by the commissioner, but shall be committed to the custody of the Commissioner of Corrections, and the costs of confining the parolee shall be paid out of funds appropriated for the Division of Corrections: Provided, however, That upon written request, the parolee shall be afforded the right to a hearing within forty-five days before the Parole Board regarding whether he or she violated the conditions of his or her release on parole.

(2) When a parolee is in custody for a violation of the conditions of his or her parole, he or she shall be given a prompt and summary hearing before a Parole Board panel upon his or her written request, at which the parolee and his or her counsel shall be given an opportunity to attend.

(A) If at the hearing it is determined that reasonable cause exists to believe that the parolee has:

(i) Absconded supervision;

(ii) Committed new criminal conduct other than a minor traffic violation or simple possession of a controlled substance; or

(iii) Violated a special condition of parole design to protect either the public or a victim; the panel may revoke his or her parole and may require him or her to serve in a state correctional institution the remainder or any portion of his or her maximum sentence for which, at the time of his or her release, he or she was subject to imprisonment.

(B) If the Parole Board panel finds that reasonable cause exists to believe that the parolee has violated a condition of release or supervision other than the conditions of parole set forth in subparagraph (A), subdivision (2) of this subsection, the panel shall require the parolee to serve, for the first violation, a period of confinement up to sixty days or, for the second violation, a period of confinement up to one hundred twenty days unless the Parole Board makes specific written findings of fact that a departure from the specific limitations of this paragraph is warranted: Provided, That if the violation of the conditions of parole or rules for his or her supervision is not a felony as set out in section eighteen of this article, the panel may, if in its judgment the best interests of justice do not require a period of confinement, reinstate him or her on parole. The Division of Corrections shall effect release from custody upon approval of a home plan.

(b) Notwithstanding any provision of this code to the contrary, when reasonable cause has been found to believe that a parolee has violated the conditions of his or her parole but the violation does not constitute felonious conduct, the commissioner may, with the written consent of the parolee, allow the parolee to remain on parole with additional conditions or restrictions. The additional conditions or restrictions may include, but are not limited to, participation in any program described in subsection (d), section five, article eleven-c of this chapter. If the parolee complies with the conditions of parole the commissioner may not revoke his or her parole for the conduct which constituted the violation. If the parolee fails to comply with the conditions or restrictions and all other conditions of release, that failure is an additional violation of parole and the commissioner may proceed against the parolee under the provisions of this section for the original violation as well as any subsequent violations.

(c) When a parolee has violated the conditions of his or her release on parole by confession to, or being convicted of, any of the crimes set forth in section eighteen of this article, he or she shall be returned to the custody of the Division of Corrections to serve the remainder of his or her maximum sentence, during which remaining part of his or her sentence he or she is ineligible for further parole.

(d) Whenever a person's parole has been revoked, the commissioner shall, upon receipt of the panel's written order of revocation, convey and transport the paroled prisoner to a state correctional institution. A parolee whose parole has been revoked shall remain in custody until delivery to a corrections officer sent and duly authorized by the commissioner for the removal of the parolee to a state correctional institution. The cost of confining the parolee shall be paid out of the funds appropriated for the Division of Corrections.

(e) When a parolee is convicted of, or confesses to, any one of the crimes enumerated in section eighteen of this article, it is the duty of the Parole Board to cause him or her to be returned to this state for a summary hearing as provided by this article. Whenever a parolee has absconded supervision, the commissioner shall issue a warrant for his or her apprehension and return to this state for the hearing provided in this article: Provided, That the panel considering revocation may, if it determines the best interests of justice do not require revocation, cause the parolee to be reinstated to parole.

(f) A warrant filed by the commissioner shall stay the running of his or her sentence until the parolee is returned to the custody of the Division of Corrections and is physically in West Virginia.

(g) Whenever a parolee who has absconded supervision or has been transferred out of this state for supervision pursuant to section one, article six, chapter twenty-eight of this code is returned to West Virginia due to a violation of parole and costs are incurred by the Division of Corrections, the commissioner may assess reasonable costs from the parolee's inmate funds or the parolee as reimbursement to the Division of Corrections for the costs of returning him or her to West Virginia.

(h) Conviction of a felony for conduct occurring during the period of parole is proof of violation of the conditions of parole and the hearing procedures required by the provisions of this section are inapplicable.

(i) The Commissioner of Corrections may issue subpoenas for persons and records necessary to prove a violation of the terms and conditions of a parolee's parole either at a preliminary hearing or at a final hearing before a Parole Board panel. The subpoenas shall be served in the same manner provided in the Supreme Court of Appeals of West Virginia Rules of Criminal Procedure. The subpoenas may be enforced by the commissioner through application or petition of the commissioner to the circuit court for contempt or other relief.

§62-12-20. To whom article applies.

The provisions of this article shall be applied to all persons who shall be convicted of a crime committed after this article takes effect. All persons convicted of a crime committed before this article takes effect, whether convicted before or after that time, shall remain subject to the law in effect when the crime was committed, but any such person who consents to be subject to this article may avail himself of its provisions.

§62-12-21. Repeal of inconsistent laws;"director" construed to mean "board."

All other laws or parts of laws inconsistent with this article are hereby repealed: Provided, however, That nothing in this article shall be construed to affect in any way the laws relating to juvenile probation and parole. Wherever in the official Code of West Virginia the words "director of probation and parole" are used they shall be construed to mean the board of probation and parole.

§62-12-22. Appointment of counsel for parole violators; authority to appoint; payment of counsel.

Any person accused of a violation of his parole, as set forth in this article, may be represented by counsel at any hearing held for the purpose of determining whether his parole should be revoked. In the event the person accused of a violation of his parole is unable to pay for counsel and desires to have counsel appointed for him he shall present his application for the appointment of counsel and an affidavit reflecting his inability to pay for such counsel to the circuit court in the county in which such person is confined or in the county in which the hearing is to be held for the purpose of determining whether his parole should be revoked, or to the judge thereof in vacation. If it appears to the satisfaction of the court or judge that such person is in fact unable to pay for counsel, such court or judge may appoint counsel to represent such person. Counsel so appointed shall be paid for his services and expenses in accordance with the provisions of article twenty-one, chapter twenty- nine of this code.

§62-12-23. Notification of parole hearing; victim's right to be heard; notification of release on parole.

(a) Following the sentencing of a person who has been convicted of murder, aggravated robbery, sexual assault in the first or second degree, kidnapping, child abuse resulting in injury, child neglect resulting in injury, arson or a sexual offense against a minor, the prosecuting attorney who prosecuted the offender shall prepare a parole hearing notification form. This form shall contain the following information:

(1) The name of the county in which the offender was prosecuted and sentenced;

(2) The name of the court in which the offender was prosecuted and sentenced;

(3) The name of the prosecuting attorney or assistant prosecuting attorney who prosecuted the offender;

(4) The name of the judge who presided over the criminal case and who sentenced the offender;

(5) The names of the law-enforcement agencies and officers who were primarily involved with the investigation of the crime for which the offender was sentenced; and

(6) The names, addresses and telephone numbers of the victims of the crime for which the offender was sentenced or the names, addresses and telephone numbers of the immediate family members of each victim of the crime, including, but not limited to, each victim's spouse, father, mother, brothers, sisters and any adult household member residing with the victim.

(b) The prosecuting attorney shall retain the original of the parole hearing notification form and shall provide copies of it to the circuit court which sentenced the offender, the Parole Board, the Commissioner of Corrections and to all persons whose names and addresses are listed on the form.

(c) At least forty-five days prior to the date of a parole hearing, the Parole Board shall notify all persons who are listed on the parole hearing notification form, including the circuit court which sentenced the offender, the prosecuting attorney's office that prosecuted the offender and the law-enforcement agency and officer primarily involved in the offense underlying the sentence, of the date, time and place of the hearing. Such notice shall be sent by regular mail, properly addressed and postage prepaid, by electronic mail, or by facsimile. Notice to the victims of the crime for which the offender was sentenced or the immediate family members of each victim of the crime shall be sent by certified mail, return receipt requested. The notice shall state that the victims of the crime have the right to submit a written statement to the Parole Board and to attend the parole hearing to be heard regarding the propriety of granting parole to the prisoner. The notice shall also state that only the victims may submit written statements and speak at the parole hearing unless a victim is deceased,

is a minor or is otherwise incapacitated.

(d) The panel considering the parole shall inquire during the parole hearing as to whether the victims of the crime or their representatives, as provided in this section, are present. If so, the panel shall permit those persons to speak at the hearing regarding the propriety of granting parole for the prisoner.

(e) If the panel grants parole, it shall immediately set a date on which the prisoner will be released. Such date shall be no earlier than thirty days after the date on which parole is granted. On the date on which parole is granted, the Parole Board shall notify all persons listed on the parole hearing notification form, including the circuit court which sentenced the offender and office of the prosecuting attorney that prosecuted the offender, that parole has been granted and the date of release. This notice shall be sent by the method prescribed in subsection (c) of this section. A written statement of reasons for releasing the prisoner, prepared pursuant to subsection (b), section thirteen of this article, shall be provided upon request to all persons listed on the parole hearing notification form, including the circuit court which sentenced the offender and office of the prosecuting attorney that prosecuted the offender.

§62-12-24. Request to continue for good cause and timely notice required.

(a) Any inmate scheduled for a parole interview shall, if he or she desires to continue the interview, file with the institutional parole officer a written waiver of his or her right to an interview on the date set on a form provided by the commissioner of corrections at least thirty days prior to the interview date. A copy of the waiver shall be supplied to the board of parole.

(b) The board shall propose for promulgation a legislative rule pursuant to article three, chapter twenty-nine-a of this code setting forth criteria constituting emergency circumstances where a waiver of interview filed less than thirty days prior to the scheduled interview shall constitute good cause for a continuance.

(c) Any inmate failing to appear for his or her scheduled parole interview who has not waived his or her interview pursuant to subsection (a) or (b) of this section shall be deemed to have waived his or her right to a parole interview for a period of twelve months from the date of the interview at which he or she failed to appear. The panel conducting the interview shall have discretion to reset the interview with notice to the inmate and any other person or persons entitled by law to notice, prior to the expiration of the twelve-month waiver period.

§62-12-25

Repealed

Acts, 2018 Reg. Sess., Ch. 107.

§62-12-26. Extended supervision for certain sex offenders; sentencing; conditions; supervision provisions; supervision fee.

(a) Notwithstanding any other provision of this code to the contrary, any defendant convicted after the effective date of this section of a violation of §61-8-12 of this code or a felony violation of the provisions of §61-8B-1 *et seq*., §61-8C-1 *et seq*., and §61-8D-1 *et seq*., of this code shall, as part of the sentence imposed at final disposition, be required to serve, in addition to any other penalty or condition imposed by the court, a period of supervised release of up to 50 years: *Provided*, That the period of supervised release imposed by the court pursuant to this section for a defendant convicted after the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, 2006, of a violation of §61-8B-3 or §61-8B-7 of this code and sentenced pursuant to §62-12-9(a) of this code, shall be no less than 10 years: *Provided, however*, That a defendant designated after the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, 2006, as a sexually violent predator pursuant to the provisions of §15-12-2a of this code shall be subject, in addition to any other penalty or condition imposed by the court, to supervised release for life: *Provided further*, That a defendant convicted of a violation of §61-8A-2, §61-8A-4, or §61-3C-14b of this code on and after the effective date of the amendment to this section enacted during the 2021 regular session of the Legislature is subject to the provisions of this section: *And Provided further*, That pursuant to the provisions of subsections (a) and (h) of this section, a court may modify, terminate, or revoke any term of supervised release imposed pursuant to this subsection.

(b) Any person required to be on supervised release between the minimum term of 10 years and life pursuant to the provisos of §62-12-26(a) of this code also shall be further prohibited from:

(1) Establishing a residence or accepting employment within 1,000 feet of a school or child care facility or within 1,000 feet of the residence of a victim or victims of any sexually violent offenses for which the person was convicted;

(2) Loitering within 1,000 feet of a school or child care facility or within 1,000 feet of the residence of a victim or victims of any sexually violent offenses for which the person was convicted: *Provided*, That the imposition of this prohibition applies to a defendant convicted after the effective date of this section as amended and reenacted during the regular session of the Legislature, 2015: *Provided, however*, That as used in this subdivision "loitering" means to enter or remain on property while having no legitimate purpose or, if a legitimate purpose exists, remaining on that property beyond the time necessary to fulfill that purpose: *Provided further*, That nothing in this subdivision shall be construed to prohibit or limit a person's presence within 1,000 feet of a location or facility referenced in this subdivision if the person is present for the purposes of supervision, counseling, or other activity in which the person is directed to participate as a condition of supervision or where the person has the express permission of his or her supervising officer to be present;

(3) Establishing a residence or any other living accommodation in a household in which a

child under 16 resides if the person has been convicted of a sexually violent offense against a child, unless the person is one of the following:

(i) The child's parent;

(ii) The child's grandparent; or

(iii) The child's stepparent and the person was the stepparent of the child prior to being convicted of a sexually violent offense, the person's parental rights to any children in the home have not been terminated, the child is not a victim of a sexually violent offense perpetrated by the person, and the court determines that the person is not likely to cause harm to the child or children with whom such person will reside: *Provided*, That nothing in this subsection shall preclude a court from imposing residency or employment restrictions as a condition of supervised release on defendants other than those subject to the provision of this subsection.

(c) In addition to any other prohibitions, any person found guilty of violating the provisions of §61-8B-3 or §61-8B-7 of this code is also prohibited from being in a supervisory position, playing a supervisory role, or being responsible for groups of children, including, but not limited to, religious organizations, Boy Scouts, Girl Scouts, 4H organizations, sporting and scholastic teams, music, sporting, and theatre groups and camps, and summer day camps.

(d) The period of supervised release imposed by the provisions of this section shall begin upon the expiration of any period of probation, the expiration of any sentence of incarceration or the expiration of any period of parole supervision imposed or required of the person so convicted, whichever expires later.

(e) Any person sentenced to a period of supervised release pursuant to the provisions of this section shall be supervised by a multi-judicial circuit probation officer, if available. Until a multi-judicial circuit probation officer is available, the offender shall be supervised by the probation office of the sentencing court or of the circuit in which he or she resides.

(f) A defendant sentenced to a period of supervised release is subject to any or all of the conditions applicable to a person placed upon probation pursuant to the provisions of §62-12-9 of this code: *Provided*, That any defendant sentenced to a period of supervised release pursuant to this section shall participate in appropriate offender treatment programs or counseling during the period of supervised release unless the court determines the offender treatment programs or counseling to no longer be appropriate or necessary and makes express findings in support thereof.

(g) The sentencing court may, based upon defendant's ability to pay, impose a supervision fee to offset the cost of supervision. The fee shall not exceed $50 per month. The fee may be modified periodically based upon the defendant's ability to pay.

(h) *Modification of conditions or revocation*. — The court may:

(1) Terminate a term of supervised release and discharge the defendant released at any time after the expiration of two years of supervised release, pursuant to the provisions of the West Virginia Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interests of justice;

(2) Extend a period of supervised release if less than the maximum authorized period was previously imposed or modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, consistent with the provisions of the West Virginia Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision;

(3) Revoke a term of supervised release and require the defendant to serve in prison all or part of the term of supervised release without credit for time previously served on supervised release if the court, pursuant to the West Virginia Rules of Criminal Procedure applicable to revocation of probation, finds by clear and convincing evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this subdivision may not be required to serve more than the period of supervised release; or

(4) Order the defendant to remain at his or her place of residence during nonworking hours and, if the court directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this subdivision may be imposed only as an alternative to incarceration.

(i) *Written statement of conditions*. — The court shall direct that the probation officer provide the defendant with a written statement at the defendant's sentencing hearing that sets forth all the conditions to which the term of supervised release is subject and that it is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(j) *Supervised release following revocation*. — When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of supervised release authorized under §62-12-26(a) of this code, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of the term of supervised release shall not exceed the term of supervised release authorized by this section less any term of imprisonment that was imposed upon revocation of supervised release.

(k) *Delayed revocation*. — The power of the court to revoke a term of supervised release for violation of a condition of supervised release and to order the defendant to serve a term of imprisonment and, subject to the limitations in §62-12-26(j) of this code, a further term of supervised release extends beyond the expiration of the term of supervised release for any period necessary for the adjudication of matters arising before its expiration if, before its

expiration, a warrant or summons has been issued on the basis of an allegation of a violation.

§62-12-27. Mandatory prerelease risk assessment of certain sex offenders.

Prior to discharging an inmate convicted of a violation of section twelve, article eight, chapter sixty-one of this code or a felony violation of the provisions of article eight-b or eight-d of said chapter at the expiration of the term of their sentence, the Division of Corrections shall perform an assessment to determine the statistical risk that the inmate will reoffend after being released from the division's custody. Prior to releasing the inmate, the division shall forward the results of the assessment to the inmate's supervising entity.

§62-12-28. Authorizing Supreme Court to develop pilot pretrial release programs.

(a) The West Virginia Supreme Court of Appeals is hereby authorized to develop pretrial release programs in all the circuits of this state with the aim of reducing regional jail populations of short-term detainees while ensuring the safety of law-abiding citizens.

(b) The programs authorized by subsection (a) of this section shall be available only to persons charged with non-violent misdemeanors.

(c) Any program developed pursuant to this section shall require input from arresting officers and shall allow for electronic authorization by magistrates of a charged person's participation.

(d) In developing the programs in the state for examples of successful practices authorized by this section the court is requested to review any existing programs.

(e) As part of any pretrial release program, the court is requested to develop an electronic system for pretrial court date reminders, through text messages, emails, or other electronic means, to reduce the risk of failure to appear, which should be available to all defendants on pretrial release and their counsel of record.

(f) The Supreme Court of Appeals is hereby requested to provide annual reports to the President of the Senate and the Speaker of the House of Delegates as to the efficacy of the programs.

§62-12-29. Shared information for community supervision.

(a) The Administrative Director of the Supreme Court of Appeals of West Virginia is requested to assemble a community supervision committee, to include representatives of the judiciary, probation, parole, day report centers, magistrates, sheriffs, corrections, and other members at the discretion of the director. The administrative director shall appoint a chair from among the members and attend the meeting ex officio.

(b) The committee shall:

(1) Design and deploy a method for probation officers, parole officers, day report centers, and others providing community supervision to electronically share offender information and assessments;

(2) Coordinate information reporting and access across agencies continuing supervision;

(3) Collect and share information about assessed and collected restitution among agencies continuing supervision;

(4) Collect sentencing-level data to enable the study of sentencing practices across the state;

(5) Coordinate with the Community Corrections Subcommittee of the Governor's Committee on Crime, Delinquency, and Correction in the discharge of these duties; and

(6) Research and recommend a means for the development and deployment of an electronic system for pretrial court date reminders, through text messages, emails, or other electronic means, to reduce the risk of failure to appear, which should be available to all defendants on pretrial release and their counsel of record.

(c) The committee shall annually submit a report on its activities during the previous year, on or before September 30, to the Governor, the Speaker of the House of Delegates, the President of the Senate and, upon request, to any individual member of the Legislature.

§62-13-1.

Repealed.

Acts, 2000 Reg. Sess., Ch. 60.

§62-13-2. Supervision of probationers and parolees; final determinations remaining with board of probation and parole.

(a) The Supreme Court of Appeals shall take charge of and cause to be supervised all persons placed on probation and shall prescribe rules for the supervision of probationers under their supervision and control.

(b) The commissioner of corrections shall supervise all persons released on parole and placed in the charge of a state parole officer and all persons released on parole under any law of this state. He or she shall also supervise all probationers and parolees whose supervision may have been undertaken by this state by reason of any interstate compact entered into pursuant to the uniform act for out-of-state probation and parolee supervision. The commissioner shall prescribe rules for the supervision of probationers and parolees under his or her supervision and control and shall succeed to all administrative and supervisory powers of the board of probation and parole and the authority of the board of probation and parole in those matters only.

The commissioner of corrections shall administer all other laws affecting the custody, control, treatment and employment of persons sentenced or committed to institutions under the supervision of the department or affecting the operation and administration of institutions or functions of the department.

The final determination regarding the release of inmates from penal institutions and the final determination regarding revocation of parolees from those institutions pursuant to the provisions of article twelve of this chapter shall remain within the exclusive jurisdiction of the board of probation and parole.

§62-13-3

Repealed

Acts, 2018 Reg. Sess., Ch. 107.

§62-13-4

Repealed

Acts, 2018 Reg. Sess., Ch. 107.

§62-13-5

Repealed

Acts, 2018 Reg. Sess., Ch. 107.

§62-13-6.

Repealed.

Acts, 1999 Reg. Sess., Ch. 61.

§62-13-6a

Repealed

Acts, 2018 Reg. Sess., Ch. 107.

§62-13-7. Repeal of inconsistent laws; transfer of certain functions of board of probation and parole to department of corrections.

All other laws or parts of laws inconsistent with this article are hereby repealed to the extent of such inconsistency: Provided, however, That nothing in this article shall be construed to affect in any way the laws relating to juvenile probation. Whenever in the official Code of West Virginia the words "board of probation and parole" are used and refer to specific administrative and supervisory functions and duties transferred to the department of corrections by this article, the words shall be construed to mean said department.

§62-14-1. Enactment of compact.

The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

AGREEMENT ON DETAINERS

The contracting states solemnly agree that:

ARTICLE I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

ARTICLE II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

ARTICLE III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be

made of the indictment, information or complaint: Provided, That for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, superintendent or other official having custody of him who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, superintendent or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, superintendent or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final

disposition referred to in paragraph (a) hereof shall void the request.

ARTICLE IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: Provided, That the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request: Provided further, That there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the Governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V (e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the

appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt

with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

ARTICLE VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the Constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held

invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the Constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

§62-14-2. "Appropriate court" defined.

The phrase "appropriate court" as used in the agreement on detainers shall, with reference to the courts of this state, mean a court of record with criminal jurisdiction.

§62-14-3. Enforcement of agreement.

All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

§62-14-4. Application of habitual criminal law not required.

Nothing in this article or in the agreement on detainers shall be construed to require the application of sections eighteen and nineteen of article eleven, chapter sixty-one of the Code of West Virginia to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of said agreement.

§62-14-5. Escape of prisoner while in temporary custody.

Escape or attempt to escape from custody, whether within or without this state, while in the temporary custody of an authority of another state acting pursuant to the agreement on detainers shall constitute an offense against the laws of this state to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been released to temporary custody and shall be punishable in the same manner as an escape or attempt to escape from said institution.

§62-14-6. Delivering custody of prisoner.

It shall be lawful and mandatory upon the warden, superintendent or other state official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers.

§62-14-7. Central administrator and information agent.

The commissioner of public institutions shall serve as the central administrator and chief information officer for the agreement on detainers, pursuant to the provisions of Article VII of the agreement.

§62-14A-1. Extradition of fugitives from foreign nations.

The Governor, whenever required by the executive authority of the United States pursuant to the Constitution and laws thereof, shall deliver over to justice any person found within this state who shall be charged with having committed any crime without the jurisdiction of the United States.

The Governor, though not so required, may in his or her discretion deliver over to justice any person found within this state who shall be charged with having committed without the jurisdiction of the United States any crime except treason, which by the laws of this state, if committed herein, would be punishable by death or imprisonment in the penitentiary. The Governor shall require such evidence of the guilt of the person so charged, as would be necessary to justify an indictment against the person, had the crime charged been committed in this state. The expense of the apprehension and delivery shall be defrayed by those to whom the delivery is made.

§62-14A-2. Extradition of persons charged with crime in another state or imprisoned or awaiting trial in another state.

(a) Where appearing in this article, the term "Governor" includes any person performing the functions of Governor by authority of the law of this state. The term "executive authority" includes the Governor, and any person performing the functions of Governor in a state other than this state. The term "state", referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.

(b) Subject to the provisions of this article, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the Governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state: Provided, That the demand or application of the executive authority of such other state is accompanied by an affidavit or sworn evidence that the demand or application is made in good faith for the punishment of crime, and not for the purpose of collecting a debt or pecuniary mulct, or of removing the alleged fugitive to a foreign jurisdiction with a view to serve him or her there with civil process.

(c) No demand for the extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing alleging, except in cases arising under subsection (g) of this section, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he or she fled from the state, and accompanied by a copy of an indictment found, or by information supported by affidavit, in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate or justice thereof, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his or her bail, probation, or parole. The indictment, information, or affidavit made before the magistrate or justice must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction, or sentence must be authenticated by the executive authority making the demand.

(d) When a demand shall be made upon the Governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the Governor may call upon the Attorney General, any prosecuting officer, or the West Virginia State Police, in this state to investigate or assist in investigating the demand, and to report to him or her the situation and circumstances of the person so demanded, and whether he or she ought to be surrendered.

(e) When it is desired to have returned to this state a person charged in this state with crime, and such person is imprisoned or is held under criminal proceedings then pending

against him or her in another state, the Governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his or her term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

(f) The Governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in §62-14A-5(b) of this code, with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state voluntarily (involuntarily).

(g) The Governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in subsection (c) of this section, with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this article not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

§62-14A-3. Governor's warrant of arrest.

(a) If the Governor decides that the demand should be complied with, the Governor shall sign a warrant of arrest which shall be sealed by the Secretary of State with the Great Seal of West Virginia, and be directed by the Governor to any peace officer or other person whom he or she may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

(b) Such warrant shall authorize the peace officer or other person directed to arrest the accused at any time and any place where he or she may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provision of this article, to the duly authorized agent of the demanding state.

(c) The Governor may recall the warrant of arrest or may issue another warrant whenever the Governor deems proper.

(d) Every such peace officer or other person empowered to make the arrest shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

§62-14A-4. Hearing after arrest; application for writ of habeas corpus; arrest and confinement of fugitives from another state; bail; persons involved in criminal or civil actions in this state.

(a) No person arrested upon a warrant shall be delivered over to the agent whom the executive authority demanding him or her appointed to receive him or her unless he or she shall first be taken forthwith before a judge of a court of record in this state, who shall inform him or her of the demand made for his or her surrender and of the crime with which he or she is charged, and that he or she has the right to demand and procure legal counsel and if the prisoner or his or her counsel shall state that he, she, or they desire to test the legality of his or her arrest, the judge of the court of record shall fix a reasonable time to be allowed him or her within which to apply for a writ of habeas corpus. When a writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting attorney of the county in which the arrest is made and in which the accused is in custody, and to the agent of the demanding state.

(b) Any officer who delivers to the agent for extradition of the demanding state a person in his or her custody under the Governor's warrant, in willful disobedience to subsection (a) of this section, shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not more than $1,000 or be imprisoned not more than six months, or both.

(c) The officer or persons executing the Governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in any city, county, or regional jail; and the keeper of the jail shall receive and safely keep the prisoner until the officer or person having charge of him or her is ready to proceed on his or her route, the officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in the other state, and who is passing through this state with such a prisoner for the purpose of immediately returning the prisoner to the demanding state may, when necessary, confine the prisoner in any city, county, or regional jail; and the keeper of the jail shall receive and safely keep the prisoner until the officer or agent having charge of him or her is ready to proceed on his or her route, the officer or agent, however, being chargeable with the expense of keeping: Provided, That the officer or agent shall produce and show to the keeper of the jail satisfactory written evidence of the fact that he or she is actually transporting a prisoner to the demanding state after a requisition by the executive authority of the demanding state. The prisoner may not be entitled to demand a new requisition while in this state.

(d) Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases arising under §62-14A-2(g) of this code, with having fled from justice, or with having been convicted of a crime in that state and having escaped from

confinement, or having broken the terms of his or her bail, probation, or parole, or whenever complaint has been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in the state and that the accused has been charged in the state with the commission of the crime, and, except in cases arising under §62-14A-2(g) of this code, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his or her bail, probation, or parole, and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him or her to apprehend the person named therein, wherever he or she may be found in this state, and to bring him or her before the same or any other judge, magistrate, or court who or which may be available in, or convenient of access to, the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

(e) The arrest of a person may be lawfully made also by any peace officer, or a private person, without a warrant, upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or by imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed, and complaint must be made against him or her under oath setting forth the ground for the arrest as in the preceding section and thereafter his or her answer shall be heard as if he or she had been arrested on a warrant. Correctional officers may, additionally, make complaint against persons in their custody for whom, they have a reasonable belief, stand accused of crimes, punishable by death or confinement for a term exceeding one year, in the courts of another state.

(f) If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under §62-14A-2(g) of this code, that he or she has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him or her to the county or regional jail for a time not exceeding 30 days, and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in subsection (g) of this section, or until he or she shall be legally discharged.

(g) Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in a sum as he or she considers proper, conditioned for his or her appearance before him or her at a time specified in the bond, and for his or her surrender, to be arrested upon the warrant of the Governor of this state.

(h) If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or her or may recommit him or her for a further period not to exceed 60 days, or a judge or magistrate may

again take bail for his or her appearance and surrender as provided in subsection (g) of this section, but within a period not to exceed 60 days after the date of the new bond.

(i) If the prisoner is admitted to bail, and fails to appear and surrender himself or herself according to the conditions of his or her bond, the judge, or magistrate, by proper order, shall declare the bond forfeited and order his or her immediate arrest without warrant if he or she is within this state. Recovery may be had on a bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

(j) If a criminal prosecution has been instituted against the person under the laws of this state and is still pending, the Governor, in his or her discretion, either may surrender him or her on demand of the executive authority of another state or hold him or her until he or she has been tried and discharged or convicted and punished in this state: Provided, That any person under recognizance to appear as a witness in any criminal proceeding pending in this state may in the discretion of the Governor be surrendered on demand of the executive authority of another state or be held until criminal proceeding pending in this state has been determined: Provided, however, That any person who was in custody upon any execution, or upon process in any suit, at the time of being apprehended for a crime charged to have been committed without the jurisdiction of this state, may not be delivered up without the consent of the plaintiff in an execution or suit, until the amount of the execution has been paid, or until the person shall be otherwise discharged from the execution or process.

(k) The guilt or innocence of the accused as to the crime for which he or she is charged may not be inquired into by the Governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as provided in this article has been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime.

§62-14A-5. Return of fugitive from this state.

(a) Whenever the Governor shall demand from the executive authority of another state or from a judge of the Superior Court of the District of Columbia the return to this state of a person found in such state or the District of Columbia who is charged with a crime, who has escaped from confinement, who has been improperly released prior to completion of his or her period of confinement, or who violated the terms of his or her bail, probation, or parole, the Governor shall issue a warrant for the person under the Great Seal of West Virginia, affixed thereon by the Secretary of State to an agent, commanding said agent to receive the person so charged if delivered to him or her and to transport the person to the proper officer of this state or a county of this state in which the offense was committed.

(b) When the return to this state of a person charged with a crime in this state is required, the prosecuting attorney shall present to the Governor his or her written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him or her, the approximate time, place, and circumstances of its commission, the state in which he or she is believed to be, including the location of the accused therein, at the time the application is made, and certifying that, in the opinion of the said prosecuting attorney, the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

(c) When the return to this state is required of a person who has been previously convicted of a crime in this state and has escaped from confinement, has been improperly released prior to completion of his or her period of confinement, violated the terms of his or her bail, probation, or parole, the prosecuting attorney of the county in which the offense was committed, the Parole Board, or the Commissioner of the Division of Corrections and Rehabilitation from which escape, improper release, or violation of terms of bail, probation, or parole was committed, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which the person was convicted, the circumstances of his or her escape from confinement, or of the breach of the terms of his or her bail, probation, or parole, the state in which the person is believed to be, including the location of the person therein at the time application is made.

(d) The application shall be verified by affidavit, shall be executed in duplicate and shall, pursuant to subsection (b) of this section, be accompanied by either: Two certified copies of the indictment returned or information and affidavit filed, or, pursuant to subsection (c) of this section, two certified copies of the complaint made to the judge or justice, stating the offense with which the accused is charged, or the judgment of conviction or of the sentence. The prosecuting attorney, Parole Board, Commissioner of the Division of Corrections and Rehabilitation, or sheriff may also attach such further affidavits and other identification documents in duplicate as he or she shall deem proper to be submitted with such application. One copy of the application, with the action of the Governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint,

information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the Secretary of State, to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition.

§62-14A-6. Immunity from service of civil process; waiver of extradition proceedings; nonwaiver of rights of state; trial on other charges after return.

(a) A person brought into this state by, or after waiver of, extradition based on a criminal charge, shall not be subject to service of personal process in civil actions until the person has been convicted in the criminal proceedings, or, if acquitted, until the person has had reasonable opportunity to return to the state from which the person was extradited.

(b) Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his or her bail, probation or parole may waive the issuance and service of the warrant provided for in §62-14A-3(a) and §62-14A-3(d) of this code, and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record, within this state, a writing which states that the person consents to return to the demanding state: Provided, That before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his or her rights with respect to the issuance and service of a warrant of extradition and with respect to obtaining a writ of habeas corpus as provided for in §62-14A-4(a) of this code.

If and when such consent has been duly executed it shall forthwith be forwarded to the Office of the Governor. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent: Provided, That nothing in this subsection shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

(c) Prior waiver of extradition. — Notwithstanding any other provision of this code, a law-enforcement or corrections agency in the State of West Virginia holding a person who is charged by another jurisdiction with a violation of his or her terms of probation, parole, bail, or other form of conditional release in another jurisdiction which is demanding the return of such person shall immediately deliver the person to the duly authorized agent of the demanding state, and without the requirement of a Governor's warrant, if such person has previously executed a waiver of extradition as a condition of his or her current terms of probation, parole, bail, or other form of conditional release in the demanding state and upon receipt of the following documentation from the demanding state:

(1) A certified copy of the previously executed waiver of extradition being held by the officials in the demanding state or an electronically or electromagnetically transmitted facsimile thereof;

(2) A certified copy of an order or warrant from the demanding state seeking the return of the person or an electronically or electromagnetically transmitted facsimile thereof; and

(3) A photograph, fingerprints, or other evidence which identifies the person held by the law-enforcement or corrections agency as the person who signed the waiver of extradition and who is named in the order or warrant, or an electronically or electromagnetically transmitted facsimile thereof.

(d) Nothing in this article contained shall be deemed to constitute a waiver by this state of its right, power, or privilege to try such demanded person for an offense committed within this state, or of its right, power, or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence, or punishment for any offense committed within this state, nor shall any proceedings under this article which result in, or fail to result in, extradition, be deemed a waiver by this state of any of its rights, privileges, or jurisdiction in any way whatsoever.

(e) After a person has been brought back to this state by, or after waiver of, extradition proceedings, the person may be tried in this state for any offense which the person may be charged with having committed here as well as that specified in the requisition for his or her extradition.

(f) Nothing in this section shall be construed to limit the authority of the Governor, at his or her own instance, to refuse to honor an extradition demand from another jurisdiction.

§62-14A-7. How costs paid; complainant responsible for.

When the punishment of the crime shall be the confinement of the criminal in the penitentiary, expenses incurred shall be paid from funds available to the Division of Corrections and Rehabilitation. In all other cases such expenses shall be paid out of the county treasury of the county wherein the crime is alleged to have been committed.

The complainant in each case is answerable for all the actual costs and charges, and for the support in prison of any person so committed; and, if the charge for his or her support in prison shall not be paid when demanded, the jailer may discharge such person from prison.

§62-15-1. Short title.

This article shall be known and may be cited as the "West Virginia Drug Offender Accountability and Treatment Act".

§62-15-2. Definitions.

For the purposes of this article:

(1) "Assessment" means a diagnostic evaluation to determine whether and to what extent a person is a drug offender under this article and would benefit from its provisions. The assessment shall be conducted in accordance with the standardized risk and needs assessment and risk cut-off scores adopted by the West Virginia Supreme Court of Appeals. The results of all standardized risk and needs assessments and risk cut-off scores are confidential.

(2) "Continuum of care" means a seamless and coordinated course of substance abuse education and treatment designed to meet the needs of drug offenders as they move through the criminal justice system and beyond, maximizing self-sufficiency.

(3) "Controlled substance" means a drug or other substance for which a medical prescription or other legal authorization is required for purchase or possession.

(4) "Drug" means a controlled substance, an illegal drug or other harmful substance.

(5) "Drug court" means a judicial intervention process that incorporates the Ten Key Components and may include preadjudication or post-adjudication participation.

(6) "Drug court team" shall consist of the following members who are assigned to the drug court:

(A) The drug court judge, which may include a magistrate, mental hygiene commissioner or other hearing officer;

(B) The prosecutor;

(C) The public defender or a member of the criminal defense bar;

(D) A representative from the day report center or community corrections program, if operating in the jurisdiction;

(E) A law-enforcement officer;

(F) The drug court coordinator;

(G) A representative from a circuit court probation office or the division of parole supervision or both;

(H) One or more substance abuse treatment providers; and

(I) Any other persons selected by the drug court team.

(7) "Drug offender" means an adult person charged with a drug-related offense or an offense in which substance abuse is determined from the evidence to have been a factor in the commission of the offense.

(8) "Dual diagnosis" means a substance abuse and cooccurring mental health disorder.

(9) "Local advisory committee" may consist of the following members or their designees:

(A) A drug court circuit judge, who shall serve as chair;

(B) Drug court magistrates;

(C) The prosecutor;

(D) A public defender;

(E) The drug court coordinator;

(F) A member of the criminal defense bar;

(G) The circuit clerk;

(H) A day report center director;

(I) A circuit court probation officer, parole officer or both;

(J) Law enforcement;

(K) One or more substance abuse treatment providers;

(L) A corrections representative; and

(M) Any such other person or persons the chair considers appropriate.

(10) "Illegal drug" means a drug whose manufacture, sale, use or possession is forbidden by law.

(11) "Memorandum of understanding" means a written document setting forth an agreed upon procedure.

(12) "Offender" means an adult charged with a criminal offense punishable by incarceration.

(13) "Other harmful substance" means a misused substance otherwise legal to possess, including alcohol.

(14) "Preadjudication order" means a court order requiring a drug offender to participate in drug court before charges are filed or before conviction.

(15) "Post adjudication" means a court order requiring a drug offender to participate in drug court after having entered a plea of guilty or nolo contendre or having been found guilty.

(16) "Recidivism" means any subsequent arrest for a serious offense (carrying a sentence of at least one year) resulting in the filing of a charge.

(17) "Relapse" means a return to substance use after a period of abstinence.

(18) "Split sentencing" means a sentence which includes a period of incarceration followed by a period of supervision.

(19) "Staffing" means the meeting before a drug offender's appearance in drug court in which the drug court team discusses a coordinated response to the drug offender's behavior.

(20) "Substance" means drugs or alcohol.

(21) "Substance abuse" means the illegal or improper consumption of a substance.

(22) "Substance abuse treatment" means a program designed to provide prevention, education, and therapy directed toward ending substance abuse and preventing a return to substance usage, through a continuum of care, including: Treatment of cooccurring substance abuse and mental health issues; outpatient care; intensive outpatient care; residential care; peer support; relapse prevention; and cognitive behavioral programming, based on research about effective treatment/recovery models for the offender population.

(23) "Ten Key Components" means the following benchmarks intended to describe the very best practices, designs, and operations of drug courts. These benchmarks are meant to serve as a practical, yet flexible framework for developing effective drug courts in vastly different jurisdictions and to provide a structure for conducting research and evaluation for program accountability:

(A) Drug courts integrate alcohol and other drug treatment services with justice system case processing;

(B) Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights;

(C) Eligible participants are identified early and promptly placed in the drug court program;

(D) Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services;

(E) Abstinence is monitored by frequent alcohol and other drug testing;

(F) A coordinated strategy governs drug court responses to participants' compliance;

(G) Ongoing judicial interaction with each drug court participant is essential;

(H) Monitoring and evaluation measure the achievement of program goals and gauge effectiveness;

(I) Continuing interdisciplinary education promotes effective drug court planning, implementation and operations; and

(J) Forging partnerships among drug courts, public agencies and community-based organizations generates local support and enhances drug court effectiveness.

(24) "Treatment supervision" means a program under which an eligible felony drug offender, pursuant to section six-a of this article, is ordered to undergo treatment for substance abuse by a circuit court judge as a condition of drug court, a condition of probation or as a modification of probation.

§62-15-3. Policy and goals.

The Legislature recognizes that a critical need exists in this state for the criminal justice system to reduce the incidence of substance abuse and the crimes resulting from it. For the criminal justice system to maintain credibility, all drug offenders must be held accountable for their actions. A growing body of research demonstrates the impact of substance abuse on public safety, personal health and health care costs, the spread of communicable disease, educational performance and attainment, workforce reliability and productivity, family safety and financial stability. Requiring that accountability and rehabilitating treatment, in addition to or in place of, conventional and expensive incarceration, will promote public safety, the welfare of the individuals involved, reduce the burden upon the public treasury and benefit the common welfare of this state. The goals of this article shall include:

(1) Enhancing community safety and quality of life for citizens;

(2) Reducing recidivism;

(3) Reducing substance abuse;

(4) Increasing the personal, familial, and societal accountability of drug offenders;

(5) Restoring drug offenders to productive, law-abiding, and taxpaying citizens;

(6) Promoting effective interaction and use of resources among criminal justice and community agencies;

(7) Reducing the costs of incarceration; and

(8) Improving the efficiency of the criminal justice system by enacting an effective methodology.

§62-15-4. Court authorization and structure.

(a) Each judicial circuit or two or more adjoining judicial circuits may establish a drug court or regional drug court program under which drug offenders will be processed to address appropriately, the identified substance abuse problem as a condition of pretrial release, probation, incarceration, parole or other release from a correctional facility: Provided, That all judicial circuits must be participating in a drug court or regional drug court program in accordance with the provisions of this article by July 1, 2016.

(b) The structure, method, and operation of each drug court program may differ and should be based upon the specific needs of and resources available to the judicial circuit or circuits where the drug court program is located.

(c) A drug court program may be preadjudication or post-adjudication for an adult offender.

(d) Participation in drug court, with the consent of the prosecution and the court, shall be pursuant to a written agreement.

(e) A drug court may grant reasonable incentives under the written agreement if it finds that the drug offender:

(1) Is performing satisfactorily in drug court;

(2) Is benefitting from education, treatment and rehabilitation;

(3) Has not engaged in criminal conduct; or

(4) Has not violated the terms and conditions of the agreement.

(f) A drug court may impose reasonable sanctions on the drug offender, including incarceration for the underlying offense or expulsion from the program, pursuant to the written agreement, if it finds that the drug offender:

(1) Is not performing satisfactorily in drug court;

(2) Is not benefitting from education, treatment or rehabilitation;

(3) Has engaged in conduct rendering him or her unsuitable for the program;

(4) Has otherwise violated the terms and conditions of the agreement; or

(5) Is for any reason unable to participate.

(g) Upon successful completion of drug court, a drug offender's case shall be disposed of by the judge in the manner prescribed by the agreement and by the applicable policies and procedures adopted by the drug court. This may include, but is not limited to, withholding criminal charges, dismissal of charges, probation, deferred sentencing, suspended

sentencing, split sentencing, or a reduced period of incarceration.

(h) Drug court shall include the Ten Key Components and the drug court team shall act to ensure compliance with them.

(i) Nothing contained in this article confers a right or an expectation of a right to participate in a drug court nor does it obligate a drug court to accept every drug offender.

(j) Neither the establishment of a drug court nor anything herein may be construed as limiting the discretion of the jurisdiction's prosecutor to act on any criminal case which he or she deems advisable to prosecute.

(k) Each drug court judge may establish rules and may make special orders as necessary that do not conflict with rules and orders promulgated by the Supreme Court of Appeals which has administrative authority over the courts. The Supreme Court of Appeals shall provide uniform referral, procedure and order forms that shall be used in all drug courts in this state.

§62-15-5. Drug court teams.

(a) Each local jurisdiction that intends to establish a drug court, or continue the operation of an existing drug court, shall establish a local drug court team.

(b) The drug court team shall, when practicable, conduct a staffing prior to each drug court session to discuss and provide updated information regarding drug offenders. After determining their progress or lack thereof, the drug court team shall recommend the appropriate incentive or sanction to be applied. If the drug court team cannot agree on the appropriate action, the court shall make the decision based on information presented in the staffing.

§62-15-6. Eligibility.

(a) A drug offender shall not be eligible for the drug court program if:

(1) The underlying offense involves a felony crime of violence, unless there is a specific treatment program available designed to address violent offenders;

(2) The underlying offense involves an offense that requires registration as a sex offender pursuant to the article twelve, chapter fifteen of this Code;

(3) The drug offender has a prior felony conviction in this state or another state for a felony crime of violence; or

(4) The drug offender has a prior conviction in this state or another state for a crime that requires registration as a sex offender pursuant to article twelve, chapter fifteen of this Code.

(b) Eligible offenses may be further restricted by the rules of a specific drug court program.

(c) Nothing in this section shall require a drug court judge to consider or accept every offender with a treatable condition or addiction, regardless of the fact that the controlling offense is eligible for consideration in the program.

§62-15-6a. Treatment supervision.

(a) A felony drug offender is eligible for treatment supervision only if the offender would otherwise be sentenced to prison, and the standardized risk and needs assessment indicates the offender has a high risk for reoffending and a need for substance abuse treatment: Provided, That an inmate who is, or has been, convicted for a felony crime of violence against the person, a felony offense where the victim was a minor child or a felony offense involving the use of a firearm, as defined in subsections (o) and (p), section twenty-seven, article five, chapter twenty-eight of this code, shall not be eligible for treatment supervision.

(b) As a condition of drug court, a condition of probation or as a modification of probation, a circuit court judge may impose treatment supervision on an eligible drug offender convicted of a felony: Provided, That a judge may impose treatment supervision on an eligible drug offender convicted of a felony, notwithstanding the results of the risk assessment, upon making specific written findings of fact as to the reason for the departure.

(c) Whenever a circuit court judge determines that a treatment supervision participant has violated the conditions of his or her treatment supervision involving the participant's use of alcohol or a controlled substance, the judge may order a period of incarceration to encourage compliance with program requirements.

(1) Upon written finding by the circuit court judge that the participant would otherwise be sentenced to the custody of the Commissioner of Corrections for service of the underlying sentence, the cost of the incarceration order under this subsection, not to exceed a period of thirty days in any one instance, shall be paid by the Division of Corrections.

(2) Whenever a circuit court judge orders the incarceration of a treatment supervision participant pursuant to this subsection, a copy of the order of confinement shall be provided by the clerk of the circuit court within five days to the Commissioner of Corrections.

(d) The Division of Justice and Community Services shall in consultation with the Governor's Advisory Council on Substance Abuse, created by Executive Order No. 5-11, use appropriated funds to develop proposed substance abuse treatment plans to serve those offenders under treatment supervision in each judicial circuit and on parole supervision.

(e) The Division of Justice and Community Services, in consultation with the Governor's Advisory Committee on Substance Abuse, shall develop:

(1) Qualifications for provider certification to deliver a continuum of care to offenders;

(2) Fee reimbursement procedures; and

(3) Other matters related to the quality and delivery of services.

(f) The Division of Justice and Community Services shall require education and training for providers which shall include, but not be limited to, cognitive behavioral training. The duties

of providers who provide services under this section may include: Notifying the probation department and the court of any offender failing to meet the conditions of probation or referrals to treatment; appearing at revocation hearings when required; and providing assistance with data reporting and treatment program quality evaluation.

(g) The cost for all drug abuse assessments and certified drug treatment under this section and subsection (e), section seventeen, article twelve of this chapter shall be paid by the Division of Justice and Community Services from funds appropriated for that purpose. The Division of Justice and Community Services shall contract for payment for the services provided to eligible offenders.

(h) The Division of Justice and Community Services, in consultation with the Governor's Advisory Council on Substance Abuse, shall submit an annual report on or before September 30 to the Governor, the Speaker of the House of Delegates, the President of the Senate and, upon request, to any individual member of the Legislature containing:

(1) The dollar amount and purpose of funds provided for the fiscal year;

(2) The number of people on treatment supervision who received services and whether their participation was the result of a direct sentence or in lieu of revocation;

(3) The number of people on treatment supervision who, pursuant to a judge's specific written findings of fact, received services despite the risk assessment indicating less than high risk for reoffending and a need for substance abuse treatment;

(4) The type of services provided;

(5) The rate of revocations and successful completions for people who received services;

(6) The number of people under supervision receiving treatment under this section who were rearrested and confined within two years of being placed under supervision;

(7) The dollar amount needed to provide services in the upcoming year to meet demand and the projected impact of reductions in program funding on cost and public safety measures; and

(8) Other appropriate measures used to measure the availability of treatment and the effectiveness of services.

(i) Subsections (a), (b), and (c) of this section shall take effect on January 1, 2014. The remaining provisions of this section shall take effect on July 1, 2013.

§62-15-6b. Intermediate incarceration sanctions for drug court participants; responsibility for costs of incarceration.

(a) Whenever a judge of a drug court determines that a participant who has pled to a felony offense has committed a violation of his or her conditions of participation which would, in the judge's opinion, warrant a period of incarceration to encourage compliance with program requirements, the cost of the incarceration, not to exceed a period of thirty days in any one instance, shall be paid by the Division of Corrections. The judge must make a written finding that the participant would otherwise be sentenced to the custody of the Commissioner of Corrections for service of the underlying sentence.

(b) Whenever a drug court judge incarcerates a participant pursuant to subsection (a) of this section, the clerk of the circuit court shall provide a copy of the order of confinement within five days to the Commissioner of Corrections.

§62-15-7. Treatment and support services.

(a) As part of any diagnostic assessments, the individual assessment should make specific recommendations to the drug court team regarding the type of treatment program and duration necessary so that a drug offender's individualized needs can be addressed. These assessments and resulting recommendations should be based upon objective medical diagnostic criteria. Treatment recommendations accepted by the court, pursuant to the provisions of this article, shall be deemed to be reasonable and necessary.

(b) A drug court making a referral for substance abuse treatment shall refer the drug offender to a program that is licensed, certified, or approved by the court.

(c) The court shall determine which treatment programs are authorized to provide the recommended treatment to drug offenders. The relationship between the treatment program and the court should be governed by a Memorandum of Understanding, which should include the timely reporting of the drug offender's progress or lack thereof to the drug court.

(d)It is essential to provide offenders with adequate support services and aftercare.

(e) Recognizing that drug offenders are frequently dually diagnosed, appropriate services should be made available, where practicable.

(f) Recognizing that the longer a drug offender stays in treatment, the better the outcome, the length of stay in treatment should be determined by the drug court team based on individual needs and accepted practices: Provided, That drug court participation shall not be less than one year duration.

§62-15-8. Drug testing.

(a) The drug court team shall ensure fair, accurate, and reliable drug testing procedures, following collection procedures approved by the Supreme Court of Appeals.

(b) The drug offender shall be ordered to submit to frequent, random, and observed drug testing to monitor abstinence.

(c) Anyone in receipt of drug test results shall maintain the information in compliance with the requirements of federal and state confidentially laws.

§62-15-9. Governance.

(a) The Supreme Court of Appeals will be responsible for court funding, administration, and continuance or discontinuance of drug courts, mental health courts, or other problem-solving courts. The administrative director, or his or her designee, will oversee the planning, implementation, and development of these courts as the administrative arm of the Supreme Court of Appeals.

(b) The administering drug court judge in each drug court's jurisdiction shall appoint a local advisory committee. The advisory committee shall ensure quality, efficiency, and fairness in planning, implementing, and operating drug courts that serve the jurisdiction, and the provision of a full continuum of care for drug offenders.

(c) The local advisory committee shall annually report to the Supreme Court of Appeal's administrative director, or designee, by December 31, of each year. The report shall include:

(1) A description of all drug courts operating within the jurisdiction;

(2) Participating judges and magistrates if applicable;

(3) Community involvement;

(4) Education and training;

(5) Use of existing resources;

(6) Collaborative efforts; and

(7) An evaluation of the critical data elements required by subsection (a), section ten of this article.

§62-15-9a. Adult Drug Court Participation Fund.

(a) The special revenue fund created within the State Treasury designated the Adult Drug Court Participation Fund to be administered by the West Virginia Supreme Court of Appeals is hereby continued. The fund shall consist of moneys received from individuals participating in an adult drug court program.

(b) All moneys collected by the Administrator of the Supreme Court of Appeals for participation in the court's adult drug court program shall be deposited into the Adult Drug Court Participation Fund. Any moneys remaining in the fund at the end of a fiscal year shall remain in the fund and be available for expenditure during the ensuing fiscal year.

(c) All moneys deposited into the State Treasury and credited to the Adult Drug Court Participation Fund shall be used to pay the costs associated with maintaining and administering the court's adult drug court programs.

§62-15-10. Program integrity and offender accountability.

(a) Drug courts shall collect and maintain the following information and any other information required by the Supreme Court of Appeals or its administrative office:

(1) Prior criminal history;

(2) Prior substance abuse treatment history, including information on the drug offender's success or failure in those programs;

(3) Employment, education, and income histories;

(4) Gender, race, ethnicity, marital and family status, and any child custody and support obligations;

(5) The number of babies, both addicted and healthy, born to female drug offenders during participation in drug court;

(6) Instances of relapse occurring during participation in drug court;

(7) Instances of recidivism occurring during and after participation in drug court. Recidivism shall be measured at intervals of six months, one year, two years, and five years after successful graduation from drug court;

(8) The number of offenders screened for eligibility, the number of eligible drug offenders who were and were not admitted and their case dispositions;

(9) The drug of choice and the estimated daily financial cost to the drug offender at the time of entry into the program; and

(10) The costs of operation and sources of funding.

(b) A drug offender may be required as a condition of pretrial diversion, probation, or parole to provide the information described in this section. The collection and maintenance of information under this section shall be collected in a standardized format according to applicable guidelines set forth by the Supreme Court of Appeals.

(c) To protect drug offenders' privacy in accordance with federal and state confidentiality laws, treatment records must be kept in a secure environment, separated from the court records to which the public has access.

§62-15-11. Funding.

(a) Each drug court with the guidance of the Supreme Court of Appeals may establish a schedule for the payment of reasonable fees and costs necessary to conduct the program;

(b) Nothing in this article shall prohibit local advisory committees or drug court teams from obtaining supplemental funds or exploring grants to support drug courts.

(c) Nothing in this article shall be construed to supplant funds currently utilized for drug courts.

§62-15-12. Immunity from liability.

(a) Any individual who, in good faith, provides services pursuant to this article shall not be liable in any civil action. The grant of immunity provided in this subsection shall extend to all employees and administrative personnel.

(b) Any qualified person who obtains, in a medically accepted manner, a specimen of breath, blood, urine, or other bodily substance pursuant to any provision of this article shall not be liable in any civil action.

§62-15-13. Statutory construction.

The provisions of this article shall be construed to effectuate its remedial purposes.

§62-15A-1. Definitions.

As used in this article:

“Addiction service provider” means a person licensed by this state to provide addiction and substance abuse services to persons addicted to opioids.

“Adult drug court judge” means a circuit court judge operating a drug court as defined in §62-15-2 of this code.

“Adult Drug Court Program” means an adult treatment court established by the Supreme Court of Appeals of West Virginia pursuant to this article and §62-15-1 et seq. of this code.

“Authority” means the Regional Jail and Correctional Facility Authority.

“Circuit court” means those courts set forth in §51-2-1 et seq. of this code.

“Court” means the Supreme Court of Appeals of West Virginia.

“Department” means the Department of Military Affairs and Public Safety.

“Division” means the Division of Corrections.

“LS/CMI assessment criteria” means the level of service/case management inventory which is an assessment tool that measures the risk and need factors of adult offenders.

“Medication-assisted treatment” means the use of medications, in combination with counseling and behavioral therapies, to provide a whole-patient approach to the treatment of substance use disorders.

“Prescriber” means an individual currently licensed and authorized by this state to prescribe and administer prescription drugs in the course of their professional practice.

§62-15A-2. The Department of Military Affairs and Public Safety Drug Addiction Treatment Program.

(a) The Department of Military Affairs and Public Safety Program. –

(1) The secretary of the department shall establish a program to provide addiction treatment, including medication-assisted treatment, to persons who are offenders within the criminal justice system, eligible to participate in a program, and selected under this section to be participants in the program because of their dependence on opioids.

(2) In the case of the medication-assisted treatment provided under the program, a drug may be used only if it has been approved by the United States Food and Drug Administration for use in the prevention of relapse to opioid dependence and in conjunction with psychosocial support, provided as part of the program, appropriate to patient needs.

(3) The department may limit the number of participants.

(b) Court program. –

(1) If the court's adult drug court program participates in a drug addiction program, the court shall select persons who are participants in the Adult Drug Court program, who have been clinically assessed and diagnosed with opioid addiction. Participants must either be eligible for Medicaid or eligible for a state, federal, or private grant or other funding source or combination of sources that provides for the full or partial payment of the treatment necessary to participate in the program. After being enrolled in the program, participants shall comply with all requirements of the adult drug court program.

(2) Treatment may be provided under this subsection only by a treatment provider who is approved by the court or adult drug court program consistent with the policies and procedures for adult drug courts developed by the court. In serving as a treatment provider, a treatment services provider shall do all of the following:

(A) Provide treatment based on an integrated service delivery model that consists of the coordination of care between a prescriber and the addiction services provider;

(B) Conduct any necessary additional professional, comprehensive substance abuse and mental health diagnostic assessments of persons under consideration for selection as pilot program participants to determine whether they would benefit from substance abuse treatment and monitoring;

(C) Determine, based on the assessments described in §62-15A-2(b)(2)(B) of this code the treatment needs of the participants served by the treatment provider;

(D) Develop, for the participants served by the treatment provider, individualized goals and objectives;

(E) Provide access to the non-narcotic, long-acting antagonist therapy included in the pilot program's medication-assisted treatment; and

(F) Provide other types of therapies, including psychosocial therapies, for both substance abuse and any disorders that are considered by the treatment provider to be cooccurring disorders.

(c) (1) The Division of Corrections shall select persons, within the custody of the Division of Corrections, who are determined to be at high risk using the LS/CMI assessment criteria to participate in the program. Participants must either be eligible for Medicaid or eligible for a state, federal, or private grant or other funding source or combination of sources that provide for the full or partial payment of the treatment necessary to participate in the program. After being enrolled in the program, a participant shall comply with all requirements of the treatment program.

(2) A participant shall:

(A) Receive treatment based on an integrated service delivery model that consists of the coordination of care between a prescriber and the addiction services provider;

(B) Submit to professional, comprehensive substance abuse and mental health diagnostic assessments to determine whether the participant would benefit from substance abuse treatment and monitoring;

(C) Receive, based on the assessments described in §62-15A-2(b)(2)(B) of this code, the treatment needs of the participants served by the treatment provider;

(D) Submit to the treatment provider individualized goals and objectives;

(E) Receive the non-narcotic, long-acting antagonist therapy included in the program's medication-assisted treatment; and

(F) Participate in other types of therapies, including psychosocial therapies, for both substance abuse and any disorders that are considered by the treatment provider to be co-occurring disorders.

(d) (1) The Regional Jail and Correctional Facility Authority shall select only persons who are serving a sentence for a felony or misdemeanor who are determined to be at high risk using the LS/CMI assessment criteria for the pilot program. Participants must either be eligible for Medicaid or eligible for a state, federal, or private grant or other funding source or combination of sources that provides for the full or partial payment of the treatment necessary to participate in the program. After being enrolled in the program, a participant shall comply with all requirements of the treatment program.

(2) A participant shall:

(A) Receive treatment based on an integrated service delivery model that consists of the coordination of care between a prescriber and the addiction services provider;

(B) Submit to professional, comprehensive substance abuse and mental health diagnostic assessments to determine whether the person would benefit from substance abuse treatment and monitoring;

(C) Receive, based on the assessments described in §62-15A-2(b)(2)(B) of this code, the treatment needs of the participants served by the treatment provider;

(D) Submit to the treatment provider individualized goals and objectives;

(E) Receive the non-narcotic, long-acting antagonist therapy included in the program's medication-assisted treatment; and

(F) Participate in other types of therapies, including psychosocial therapies, for both substance abuse and any disorders that are considered by the treatment provider to be co-occurring disorders.

(3) If a participant begins participation in the treatment pilot program while in the custody of the Commissioner of Corrections, but is confined in a regional jail and transferred to a Division of Corrections facility before completing the treatment program, the Division of Corrections shall ensure that the participant's treatment under the program will continue and that upon successful completion the participant shall receive credit off his or her sentence as would have occurred had he or she remained in the authority facility until successful completion.

§62-15A-3. Annual reports.

(a) The department and the court shall prepare a report annually.

(b) The report shall include:

(1) Number of participants;

(2) Number of participants successfully completing the program;

(3) Offenses committed or offense convicted of;

(4) Recidivism rate;

(5) Potential cost saving or expenditures;

(6) A statistical analysis which determines the effectiveness of the program; and

(7) Any other information the reporting entity finds pertinent.

(c) The department shall submit the report to:

(1) The Governor;

(2) The Chief Justice of the Supreme Court of Appeals of West Virginia; and

(3) The Joint Committee on Government and Finance.

(d) The report shall be submitted by July 1, 2019, and annually thereafter.

§62-15B-1. Oversight and implementation of family drug treatment courts.

(a) The Supreme Court of Appeals of West Virginia may implement a Family Drug Treatment Court program.

(b) Family drug treatment courts are specialized court dockets within the existing structure of West Virginia's court system offering judicial monitoring of intensive treatment and strict supervision of individuals with substance use disorder involved in a child abuse and neglect case pursuant to §49-4-601, *et. seq*.

(c) The Supreme Court of Appeals of West Virginia may:

(1) Provide oversight for the distribution of funds for family drug treatment courts;

(2) Provide technical assistance to family drug treatment courts;

(3) Provide training for judges who preside over family drug treatment courts;

(4) Provide training to the providers of administrative, case management, and treatment services to family drug treatment courts; and

(5) Monitor the completion of evaluations of the effectiveness and efficiency of family drug treatment courts in the state.

(d) A state family drug treatment court advisory committee shall be established to:

(1) Evaluate and recommend standards for the planning and implementation of family drug treatment courts;

(2) Assist in the evaluation of their effectiveness and efficiency; and

(3) Encourage and enhance cooperation among agencies that participate in their planning and implementation.

(e) The committee shall be chaired by the Chief Justice of the Supreme Court of Appeals of West Virginia or his or her designee and shall include a circuit court judge who presides over a family drug treatment court; the Director of the Office of Drug Control Policy or the executive assistant to the director; Cabinet Secretary of the Department of Health or his or her designee; Cabinet Secretary of the Department of Human Services or his or her designee; the commissioners or their designee of the following bureaus: the Bureau for Social Services; the Bureau for Public Health; and the Bureau for Behavioral Health; the Executive Director of the West Virginia Prosecuting Attorneys Institute or his or her designee; the Executive Director of the West Virginia Public Defender Services or his or her designee; and the Executive Director of West Virginia CASA Association or his or her designee.

(f) Each circuit selected to establish a family drug treatment court shall establish and maintain a local family drug treatment court advisory committee. Each advisory committee shall ensure quality, efficiency, and fairness in the planning, implementation, and operation of the family drug treatment court or courts that serve the jurisdiction or combination of jurisdictions. Advisory committee membership shall include, but shall not be limited to the following people or their designees:

(1) The family drug treatment court judge;

(2) The prosecuting attorney of the county;

(3) The public defender or a member of the county bar who represents individuals in child abuse and neglect cases;

(4) The Community Service Manager of the Bureau for Social Services;

(5) A court appointed special advocate, as applicable; and

(6) Any other individuals selected by the family drug treatment court advisory committee.

§62-15B-2. Establish eligibility and policies procedures.

(a) Each local family drug treatment court advisory committee shall establish criteria for the eligibility and participation of adult respondents who have been adjudicated an abusing or neglecting parent pursuant to §49-4-601(i) and who have been granted a post-adjudicatory improvement period pursuant to §49-4-610(2) and who have a substance use disorder. Adult respondents who have been adjudicated for such abuse that the department is not required to make reasonable efforts to preserve the family as defined in §49-4-604(c)(7) shall not be eligible for participation in any family drug treatment court: *Provided*, That if the court determines that the parental rights of the parent to another child have been terminated involuntarily, the court, in its sole discretion and subject to other eligibility criteria as established by the local family drug treatment court advisory committee, may admit the parent to family drug treatment court.

(b) Participation by an adult respondent in a family drug treatment court shall be voluntary and made pursuant only to a written agreement into by and between the adult respondent and the department with concurrence of the court.

§62-16-1. Short title.

This may be cited as the Military Service Members Court Act.

§62-16-2. Legislative findings.

(a)(1) The Legislature recognizes that while most veterans are strengthened by their military service, the combat experiences of many veterans have unfortunately left a growing number of veterans who suffer from issues such as Post Traumatic Stress Disorder and traumatic brain injury. A growing body of research shows that one in five veterans will have symptoms of a mental illness, mental health disorder, or cognitive impairment. One in six veterans who served in either Operation Enduring Freedom or Operation Iraqi Freedom suffer from substance abuse and related issues. As a result, many veterans have found themselves in the criminal court system charged with crimes which may be directly attributable to these service-related issues.

(2) The Legislature further recognizes that a Military Service Members Court is necessary to link veterans with the programs, benefits, and services that are necessary to help them overcome these issues and provide them with rehabilitation services instead of incarceration.

(3) Given the context of veteran life, especially given their past training and experiences in the Armed Forces, it is reasonably anticipated and likely that military service members would respond favorably to a structured environment. The Military Service Members Court is a professional, structured, and monitored program which mandates and provides participant accountability and responsibility, including mandatory court appearances, treatment, and counseling sessions, as well as frequent and random testing for drug and alcohol use. However, the Legislature also finds that some may still struggle. Those are the veterans who need the structure and support of a Military Service Members Court program the most. Without the structure of a Military Service Members Court program mentally ill and challenged veterans may well reoffend, remain in the criminal court system, and suffer under the emotional, physical, and mental yoke of substance abuse.

(4) The Legislature creates the Military Service Members Court to ensure that these veterans in need are able meet their obligations to themselves, their family, their loved ones, the court, and their community.

§62-16-3. Definitions.

For the purposes of this article:

"Assessment" means an evaluation to determine whether a criminal defendant is a military service member as defined by this section, that the offense he or she has been charged with are attributable to their military service, and if the offender would benefit from the provisions set forth in this article.

"Court" means a Military Service Members Court.

"Department" means the West Virginia Department of Veterans' Assistance.

"Military Service Members Court program" or "program" is a program that includes pre-adjudicatory and post-adjudicatory treatment for military service members.

"Military service member" means a person who is currently serving in the Army, Air Force, Marines, Navy, Space Force, or Coast Guard on active duty, reserve status, or in the National Guard, or a person who served in the active military, or who was discharged or released under conditions other than dishonorable.

"Offender" means a criminal defendant who qualifies as a military service member under this article.

"Post-adjudicatory program" means a program in which the offender has admitted guilt or has been found guilty and agrees, with the prosecutor's consent, to enter a court program as part of his or her sentence.

"Pre-adjudicatory program" means a program that allows the offender, with the consent of the prosecutor, team, and the court to expedite the offender's criminal case before conviction or before filing of a criminal case and requires the offender to agree to and successfully complete the court program as part of the written agreement.

"VA" means the United States Department of Veterans Affairs.

"VJO" means the Veterans Justice Outreach program of the United States Department of Veterans Affairs.

"Written agreement" means the agreement executed to allow a military service member to participate in a court program.

§62-16-4. Court authorization; funding; immunity from liability.

(a) Court authorization. — The Supreme Court of Appeals is hereby authorized to establish a Military Service Members Court program, under the oversight of its administrator. Each Military Service Members Court may be a stand-alone court or operated in conjunction with an existing drug court or other specialty court program. The Supreme Court of Appeals is further encouraged to give deference to circuits or regions in the operation of those programs to maximize flexibility, and to take into account regional and other differences and circumstance.

(b) Once a program is established, termination of any program may not take place until at least six months after written notice of the intent to terminate the program has been provided by the Supreme Court of Appeals Administrator to the Speaker of the House of Delegates and the President of the Senate.

(c) Each court judge may establish rules and may make special orders as necessary that do not conflict with rules and orders promulgated by the Supreme Court of Appeals to effectuate the purposes of this article.

(d) A court may offer pre-adjudication or post-adjudication programs for adult offenders.

(e) Nothing contained in this article confers a right or an expectation of a right to participate in a court program nor does it obligate a court to accept every military service member offender.

(f) Neither the establishment of a Military Service Members Court nor anything in this article may be construed as limiting the discretion of the prosecuting attorney to act on any criminal case which he or she determines advisable to prosecute.

(g) Funding. — Each Military Service Members Court, with the guidance of the Supreme Court of Appeals, may establish a schedule for the payment of reasonable fees and costs to be paid by participants necessary to conduct the program.

(h) Nothing in this article prohibits Military Service Members Courts from obtaining supplemental funds or exploring grants to support the courts.

(i) Immunity from liability. — Any person who, in good faith, provides services pursuant to this article is not liable in any civil action, unless his or her actions were the result of gross negligence or willful misconduct. The grant of immunity provided in this section extends to all employees and administrative personnel of a court.

§62-16-5. Eligibility; written agreement.

(a) *Eligibility.* — A military service member offender, who is eligible for probation based upon the nature of the offense for which he or she has been charged, and in consideration of his or her criminal background, if any, may, upon application, be admitted into a court program only upon the agreement of the prosecutor and the offender. Additionally, the court must also determine whether the offense is in any way attributable to the offender's military service.

(b) A military service member offender may not participate in the court program if he or she has been charged with any of the following offenses:

(1) A sexual offense, including, but not limited to, a violation of the felony provisions of §61-8-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq*. of this code, or a criminal offense where the judge has made a written finding that the offense was sexually motivated;

(2) A felony violation of the provisions of §61-8D-2, §61-8D-2a, or §61-8D-3a of this code;

(3) A felony violation of the provisions of §61-14-3 or §61-14-4 of this code;

(4) A felony violation of §61-2-9b or §61-2-14 of this code;

(5) A felony violation of §61-2-28 of this code;

(6) If he or she has previously been convicted in this state, another state, or in a federal court for any of the offenses enumerated above; or

(7) A violation of §17C-5-2 of this code, except where the military service member is eligible to participate in the Motor Vehicle Test and Lock Program under §17C-5A-1 *et seq*. of this code.

(c) *Written agreement.* — Participation in a Military Service Members Court program, with the consent of both the prosecutor and the court, shall be pursuant to a written agreement. This written agreement shall set forth all of the agreed upon provisions to allow the military service member offender to proceed in the court. The offender shall execute a written agreement with the court as to his or her participation in the program and shall agree to all of the terms and conditions of the program, including, but not limited to, the possibility of sanctions or incarceration for failing to comply with the terms of the program.

(d) Upon successful completion of a court program, the judge shall dispose of an offender's case in the manner prescribed by the written agreement and by the applicable policies and procedures adopted by the court. Disposition may include, but is not limited to, withholding criminal charges, dismissal of charges, probation, deferred sentencing, suspended sentencing, split sentencing, or a reduced period of incarceration: *Provided,* That a military service member court may not enter an order or take any action to mask a charge or

conviction, divert a charge, or modify the records of a charge or conviction in a manner that would prevent an offense from appearing on an offender’s commercial driving record.

§62-16-6. Procedure; mental health and substance abuse treatment; violation; termination.

(a) *Procedure.* — Upon application, the court shall order the offender to submit to an eligibility screening, a mental health and drug/alcohol screening, and an assessment by the Department of Veterans Affairs (VA) Veterans Justice Outreach to provide information on the offender's mental health or military service member status. The assessment shall include a risks assessment and be based, in part, upon the known availability of treatment resources available to the court. The assessment shall also include recommendations for treatment of the conditions which are indicating a need for treatment under the monitoring of the court and reflect a level of risk assessed for the individual seeking admission. The court is not required to order an assessment if a valid screening or assessment related to the present charge(s) pending against the offender has been completed within the previous 60 days.

(b) The court may order the offender to complete substance abuse treatment in an outpatient, inpatient, residential, or jail-based custodial treatment program, order the offender to complete mental health counseling in an inpatient or outpatient basis, comply with all physician recommendations regarding medications, and complete all follow-up treatment. The mental health issues for which treatment may be provided include, but are not limited to, post-traumatic stress disorder, traumatic brain injury, and depression.

(c) *Mental health and substance abuse treatment.* — The court may maintain a network of mental health treatment programs and substance abuse treatment programs representing a continuum of graduated mental health and substance abuse treatment options commensurate with the needs of offenders; these shall include programs with the VA, the department, this state, and community-based programs.

(d) *Violation.* — The court may impose reasonable sanctions under the offender's written agreement, including, but not limited to, imprisonment or dismissal of the offender from the program. The court may reinstate criminal proceedings against him or her for a violation of probation, conditional discharge, or supervision hearing, if the court finds from the evidence presented, including, but not limited to, the reports or proffers of proof from the court's professionals that:

(1) The offender is not performing satisfactorily in the assigned program;

(2) The offender is not benefitting from educational treatment or rehabilitation;

(3) The offender has engaged in criminal conduct rendering him or her unsuitable for the program; or

(4) The offender has otherwise violated the terms and conditions of the program or his or her sentence or is for any reason unable to participate.

(e) *Termination*. — Upon successful completion of the terms and conditions of the program,

the court may dismiss the original charges against the offender, successfully terminate the offender's sentence, permit the offender to enter into a plea agreement to a lesser offense, or otherwise discharge him or her from any further proceedings against him or her in the original prosecution.

(f) Nothing in this article shall be construed to permit a military service member court or any other court or tribunal to enter an order or take any other action that violates any applicable federal law or regulation, including, but not limited to:

(1) The requirements or conditions contained in 23 U.S.C. §164 *et seq*. and 23 C.F.R. §1275 *et seq*.; and

(2) The requirements or conditions contained in 49 U.S.C. 31311 and 49 C.F.R. §384 *et seq*.

§62-16-7. Program integrity and offender accountability.

(a) If deemed appropriate by the Supreme Court of Appeals or its administrative office, the courts shall collect and maintain information on participants which may include, but is not limited to, the following:

(1) The participants" prior criminal history;

(2) The participants" prior substance abuse and mental health treatment history;

(3) The participants" employment, education, and income histories;

(4) The participants" gender, race, ethnicity, marital and family status, and any child custody and support obligations;

(5) Instances of participants" recidivism occurring during and after participation in a court program. Recidivism may be measured at intervals of six months, one year, two years, and five years after successful graduation from Military Service Members Court;

(6) The number of offenders screened for eligibility, the number of eligible offenders who were and were not admitted, and their case dispositions; and

(7) The costs of operation and sources of funding.

(b) An offender may be required, as a condition of pretrial diversion, probation, or parole, to provide the information described in this section. The collection and maintenance of information under this section shall be collected in a standardized format according to applicable guidelines set forth by the Supreme Court of Appeals.

(c) To protect an offenders" privacy in accordance with federal and state confidentiality laws, a court shall keep treatment records in a secure environment, separated from the court records to which the public has access.